(18,482.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 295.

CITY OF JOPLIN, APPELLANT,

vs.

SOUTHWEST MISSOURI LIGHT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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a–9 EXHIBIT "A."

Ordinance No. 441.

An ordinance granting to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin, doing business under the firm name and style of the Merchants' Electric Light *Light* & Motor Company, the right to erect and operate electric light and motor plants, with necessary conduits and appliances for the transmission, distribution, and application of electric light and electric motor power and regulating the same.

Be it ordained by the council of the city of Joplin as follows:

SECTION 1. In consideration of the benefit to be derived therefrom, John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John
10 & 11 Wise, J. W. Freeman, and Chas. Ragin and their successors and assigns, are hereby granted the right, power, privilege and authority, within the city of Joplin and such additions as may be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity, to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power and for other proper purposes, for the period of twenty (20) years from the granting of this franchise, and for such purposes said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, their successors and assigns, are authorized and vested with full power to erect and maintain on, over and under the streets, avenues, alleys, lanes and public grounds, of said city, poles, masts, and other proper supports and to carry, suspend and string wires thereon and therefrom, and to lay down within such streets, avenues, alleys and lanes beneath the surface thereof, such proper pipes, wires, or conduits as may be necessary or convenient for the purpose aforesaid, and to maintain and operate, repair and renew the same as may be necessary or convenient and to occupy the streets, avenues, alleys and lanes of said city as the same may be necessary for all the purposes aforesaid.

Provided, that the aforesaid work shall be done, and the rights hereby granted, exercised in such manner as not to interfere with the rights or injure the property of other persons or corporations, and in every case where the surface of the streets avenues, alleys, lanes or public ground is broken and holes or trenches dug therein, for the purpose aforesaid, they shall be repaired by said parties within twenty-four (24) hours and placed in as good a condition as before and when poles or masts are set through any sidewalks they shall be set next to the curb, and a hole of proper size care-
12 fully cut through the walk so as not to break the same, and when set the opening around the same shall be well filled with cement.

And provided that all poles for lines parallel with alleys shall be erected in alleys except where necessary to cross streets, and to properly suspend street lights if contracted for by the city at any time.

SECTION 2. All poles or masts erected within the city limits shall be at least twelve (12) inches in diameter, and thirty (30) feet high from the surface of the ground, except poles carrying street lights, which shall be forty-five (45) feet high; and all wires used by the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin, their successors or assigns, for the purpose of conveying and transmitting the currents of electricity shall be thoroughly insulated, or of such character as is approved by the board of underwriters, and same shall not be placed or located so as to interfere with any telegraph, telephone, street-car or other electric wires now erected in the city of Joplin.

And when digging in the streets, alleys or other public places for any purpose, shall keep all openings well guarded, and keep red lights thereat at night to prevent any injury therefrom. Upon failure of the said parties to use the poles, masts and towers aforesaid, they shall remove the same, and should they fail, neglect or refuse to do so, same may be removed by the city of Joplin as any other obstruction at the expense and cost of the said company, their successors or assigns.

SECTION 3. The said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their successors and assigns, shall not be allowed to charge for electric arc lights furnished by them more than the following sums per month, viz:

For ten-o'clock circuit not to exceed the sum of eight (8) dollars per light.

For twelve-o'clock circuit, not to exceed the sum of ten (10) dollars per light.

For all-night circuit not to exceed the sum of twelve dol-
13 lars per light.

For incandescent lights of 16 c. p. for ten-o'clock circuit not to exceed the sum of $0.90 and for all-night circuit not to exceed the sum of $1.00 per light.

For one light erected on the front porch of Freeman's foundry, so as to light the 'Frisco railroad crossing on Main street and to be maintained and kept in order without charge or expense to the city.

SECTION 4. The said Merchants' Electric Light & Motor Co. shall protect, indemnify and save harmless the city of Joplin at all time from expense, cost and damage for injuries sustained by any person or persons, or damage to property during the construction, repair or operation of said electric light and motor plants or either of them, and if any suit shall be commenced against said city for any injury or damage occasioned by any act or thing done by said electric light & motor company, their successors or assigns, their agents, servants or employees during the construction, repair or operation of such electric light and motor plants, then the said Merchants' Electric Light & Motor Company their successors and assigns, shall, at their own expense, join said City of Joplin in defense against said

suits, claims and actions as well as pay off and satisfy any judgments that may be obtained against said city in any such proceedings.

SECTION 5. The said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their successors or assigns, shall within ten days from and after the date of the passage of this ordinance, file with the city clerk of the city of Joplin, their written acceptance of the right and privileges herein granted, subject to all the conditions herein imposed and said city clerk shall report the same to the city council.

Unless said parties, their successors or assigns, shall begin work in good faith within sixty (60) days from the approval of this ordinance, and have work in operation within four months this ordinance shall be void and of no effect. Provided the said
14 John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their assigns, do further agree to pay for the publication of this ordinance upon presentation of bill for same; and upon its refusal to pay said bill or cost of publication, then this ordinance shall be deemed null and void until the above conditions are complied with.

SECTION 6. This ordinance shall take effect and be in force from and after its publication.

Approved October 7, 1891.

R. B. TYLER, *Mayor.*

Attest: J. R. KAVANAUGH, *City Clerk.*

I, R. A. Spears, city clerk within and for the city of Joplin, county of Jasper, State of Missouri, do hereby certify that the above is a true and correct copy of ordinance No. 441 of the city of Joplin as recorded in Council Record, year 1891, page 589.

[SEAL.] (Signed) R. A. SPEARS, *City Clerk.*

Joplin, Mo., April 9, 1897.

Thereafter, to wit, on the 21st day of March, 1900, an amended bill of complaint was filed in the above-entitled cause, said amended bill being in words and figures as follows, to wit:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

SOUTHWEST MISSOURI LIGHT COMPANY, a Corporation, Complainant,
vs.
CITY OF JOPLIN, a Municipal Corporation, Defendant.

To the honorable judges of the circuit court of the United States in and for the western division of the western district of Missouri:

The Southwest Missouri Light Company, a corporation organized under and pursuant to the laws of the State of Missouri, a citizen of the western division of the United States circuit court for the western district of Missouri, and having its chief office at Kansas City, in

said State, brings this, its amended bill of complaint, (leave to file the same having been given by the court), against The City of Joplin, a municipal corporation, duly created and organized as a city of the third class, under and pursuant to the laws of the State of Missouri, and a citizen of said State, and also of said western
15 division of the United States circuit court for the western district of Missouri.

And thereupon your orator complains and says that heretofore and on October 7th, 1891, the defendant, (being a city of the third class under the laws of Missouri as aforesaid), by its municipal ordinance number 441, duly passed and approved on said last-named day, (a true copy of which is hereto annexed as Exhibit "A" and made a part of this bill of complaint) did grant in consideration of the benefit to be derived by it therefrom, to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, doing business under the firm name and style of "The Merchants' Electric Light & Motor Company" and to their successors and assigns, the right, power, privilege and authority within said city of Joplin and such additions as might be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plant, apparatus, machinery, and appliances for the generation of electricity; to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power and for other purposes for the period of twenty years from the granting of said franchise, and for said purposes said J. C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, their successors and assigns, were by said ordinance hereinbefore mentioned, authorized and vested with full power to erect and maintain on, over and under the streets, avenues, alleys, lanes and public grounds of said city of Joplin, poles, masts and other proper supports, and to carry, suspend and string wires thereon and therefrom, and to lay down within such streets, avenues, alleys and lanes beneath the surface thereof, such proper pipes, wires or conduits as might be necessary or convenient for the purposes aforesaid and to maintain, and operate, repair and renew the same as might be necessary or convenient and to occupy the streets, avenues, alleys and lanes of said city as the same might be necessary.

16 And your orator further shows that it was also provided and enacted in said ordinance of the defendant, No. 441, hereinbefore mentioned, that the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, and their successors and assigns, should not charge for electric arc lights furnished by them more than the following sum per month, viz:

For ten-o'clock circuit not to exceed the sum of eight (8) dollars per light.

For twelve-o'clock circuit, not to exceed the sum of ten (10) dollars per light.

For all-night circuit not to exceed the sum of twelve (12) dollars per light.

For incandescent lights of 16 c. p. for ten-o'clock circuit not to exceed the sum of $0.90 and for all-night circuit not to exceed the sum of $1.00 per light.

And your orator further shows that it was also provided and agreed in said ordinance No. 441 aforesaid, that said John C. Cox, Jr., and the other grantees therein mentioned of the franchise above referred to should maintain and keep in order, without charge to The City of Joplin, defendant herein, one light so erected on the front porch of Freeman's foundry in said city of Joplin, as to light the 'Frisco railroad crossing thereat in said city.

And your orator further shows and states that it was also provided in said ordinance No. 441 hereinbefore mentioned as follows:—

That said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, Charles Ragin and their successors or assigns, should within ten days from and after the date of the passage of said ordinance, file with the city clerk of the city of Joplin their written acceptance of the rights and privileges granted by said ordinance and subject to the conditions therein imposed.

17 And your orator further shows and states that it was likewise provided in said ordinance No. 441, hereinbefore mentioned that "unless said parties, (meaning J. C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin), their successors or assigns" shall begin work in good faith within sixty (60) days from the approval of this ordinance, (meaning said ordinance number 441), and have work in operation within four (4) months, this ordinance, (meaning said ordinance number 441), shall be void and of no effect; provided, the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, or their successors, do further agree to pay for the publication of this ordinance upon presentation of bill for same, and upon its refusal to pay said bill or cost of publication then this ordinance shall be deemed null and void until the above conditions are complied with."

And your orator further shows and states that it was provided in said ordinance number 441 that the same should take effect and be in force from and after its publication.

And your orator further shows and states that said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, (doing business under the firm name and style of Merchants' Electric Light and Motor Company, as hereinbefore stated), did, within the time prescribed in said ordinance number 441, file their written acceptance of the same, with the city clerk of said City of Joplin, defendant in this bill of complaint, subject to all the conditions imposed and contained in said ordinance, and did pay for the publication of the same, as therein required and provided, and did begin the work contemplated by said ordinance within sixty days from its approval, and did likewise have said work in operation within four months from the time of the approval of said ordinance, and did likewise fully comply on their part with all the obligations, covenants and conditions imposed on them by said ordinance number 441 aforesaid.

And your orator further shows and states that the work
18 performed by the aforesaid grantees of said franchise, under said ordinance No. 441 and hereinbefore referred to, consisted in the construction of an electric motor plant, the erection of poles with wire strung thereon along the streets of The City of Joplin defendant herein, together with all other necessary and suitable equipments and appliances for conducting and operating the business of furnishing motor power and light to the city of Joplin, and the citizens thereof, and additions thereto; that said power, plant, equipments and appliances for furnishing said light and motor power, together with the subsequent repairs and improvements of same, were procured, erected, and constructed by the grantees of said franchise at great cost and expense to them, to wit: the sum of fifteen thousand dollars ($15,000.00) or thereabouts.

And your orator further shows and states as follows: That thereafter, and on or about June 7th, 1892, said Merchants' Light & Motor Company, (which prior to said time as an unincorporated company had been operating and conducting its said electric light and motor plant) was duly incorporated pursuant to the laws of the State of Missouri, under the said name and style of Merchants' Electric Light & Motor Company, and as said body corporate, it thereupon succeeded to and became the owner of the motor plant, poles, wires, equipment, appliances and other property hereinbefore mentioned, owned and held by said Merchants' Light & Motor Company, at the time of and prior to its incorporation as aforesaid, including the franchise and privileges granted by said ordinance No. 441, of defendant to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, under the firm name and style of "The Merchants' Light & Motor Company" and as said successor and owner said Merchants' Light & Motor Company as said body corporate, operated and conducted its said electric motor and light plant and business aforesaid, until the sale and transfer thereof to the complainant herein, as hereinafter stated.

19 That thereafter, and on December 28th, 1895, this complainant was duly incorporated, (as hereinbefore mentioned), under the laws of the State of Missouri, full power being conferred upon it by its charter to operate electric and gas works and appliances, to furnish light and power to the city of Joplin, to the inhabitants thereof and its vicinity .

That thereafter, and on June 9th, 1896, by its bill of sale bearing said date, executed in its name by its president, by authority of its board of directors, said Merchants' Electric Light & Motor Company, (being said body corporate as aforesaid, and as party of the first part) did, in consideration of the sum of fifteen thousand dollars ($15,000.00) paid to it by The Southwest Missouri Light Company, complainant herein, sell, assign, and deliver to this complainant the poles, lines and other equipment appliances and property of the said Merchants' Electric Light & Motor Company, hereinbefore referred to, including the franchise granted by the said ordinance No. 441 of defendant herein, (and hereinbefore specifically mentioned and set forth) to said John C. Cox and others doing business under the firm

name and style of "The Merchants' Electric Light & Motor Company" and of which franchise said last-mentioned company and body corporate as aforesaid had become and was the assignee and owner.

That this complainant did thereupon enter into the possession of said property, equipments and appliances and upon the possession and enjoyment of said franchise so sold and assigned to it as aforesaid, and has since said time been conducting and operating under said franchise so assigned to it as aforesaid, the business of furnishing electric lights to the inhabitants of the city of Joplin and additions thereto.

And your orator further shows and complains that the defendant The City of Joplin, has constructed an electric light plant, to be owned, controlled and operated by said city, and has not only erected arc lights on the streets of said city, and is therewith
20 furnishing its streets and alleys with arc electric lighting, but as your orator further shows and complains, said city, the defendant herein, by its mayor and council and other officers has also erected poles along the streets and alleys of said city and has strung the same with wires, and has purchased transformers and has established a schedule of rates and prices and soliciting patrons and customers and has since February 23, 1900, last past, and is still doing ordinary commercial electric lighting in said city and the additions thereto, and is thereby entering into competition with your orator, the complainant herein, in the matter of supplying and furnishing for pay to the inhabitants of defendant and its said additions, incandescent lights or other electric lighting for their residences, places of business and like places, and is thereby depriving your orator of rentals, income and profits in the matter of supplying said inhabitants aforesaid with electric lighting under the franchise hereinbefore mentioned.

And your orator further complains and shows that the aforesaid acts and proceedings of the defendant hereto and of its officers and servants in erecting its own electric light plant in furnishing and supplying its inhabitants with incandescent or other electric lights and in otherwise *in* entering into competition with complainant in the matter of doing ordinary commercial electric lighting in said city of Joplin and its additions as hereinbefore set out, have been done and purport to have been done under the authority of a two-thirds vote of the electors of said city, authorizing the increase of its municipal indebtedness for the purpose of erecting said electric light plant and also under and pursuant to ordinances of said city duly passed by its council and approved by its mayor.

That a true copy of said ordinances (including notice of said election and the ordinance declaring the result thereof) *are* hereto annexed marked Exhibits "B," "C" and "D" and made a part of this amended bill of complaint.

21 And your orator further shows and complains that it has a large amount of capital, as hereinbefore indicated, invested in said business of furnishing and supplying to the inhabitants of said city of Joplin and its vicinity electric lighting and electric

motor power, under the franchises hereinbefore mentioned and assigned to it as aforesaid; that said franchise is a valuable one; that its value and that of your orator's property used in connection therewith will be greatly impaired and perhaps wholly destroyed, if the defendant herein is permitted to continue its competition with your orator in supplying and furnishing to the inhabitants and residents of defendant, electric lighting as hereinbefore stated, and to thereby deprive your orator of rentals, profits, incomes and sources of revenue it would otherwise receive from the citizens and inhabitants of Joplin in its business of furnishing and supplying to them electric lighting under its said franchise heretofore mentioned; that great pecuniary damage, loss and hardship is thereby being inflicted and will continue to be inflicted upon your orator.

And your orator further complains and says that it is the owner of real and personal property situated within The City of Joplin, (defendant herein), and assessed by it for municipal taxation, that by reason thereof complainant, unless relief is accorded to it as prayed for in this bill, will be compelled and required through such taxation on its said property to aid and assist in operating and maintaining defendant's electric plant and business as a rival and competing one with complainant's own electric plant and business hereinbefore mentioned, all of which your orator charges, will be highly inequitable and unjust and in violation of your orator's rights in the premises.

And your orator further complains and shows that the said conduct and acts of the defendant in so entering into competition as aforesaid with your orator in the matter of supplying and furnishing to the citizens of defendant and its vicinity electric
22 lighting as hereinfore mentioned, violates and sets at naught to your orator's great injury and damage, the clause of the Constitution of the United States (contained in article 1, section 10 of said instrument), which provides that no State shall "pass any law inpairing the obligation of contracts," and also violates the further provisions of the Constitution of the United States contained in article XIV, section 1 thereof, which provides that no State "shall deprive any person of property without due process of law."

And your orator further shows and states that it is without adequate remedy at law to prevent the wrongs and injuries to it contemplated and threatened by defendany hereto and herein complained of and that the matter in dispute herein exceeds the sum of two thousand dollars, exclusive of interest and costs.

Wherefore, your orator prays for a temporary injunction restraining and enjoining the defendant to this bill of complaint, its officers, agents and servants, from supplying or furnishing to the inhabitants of The City of Joplin, defendant herein, or of additions thereto, incandescent lights or other electric lighting as is now being done by it as hereinbefore set forth, and that on a final hearing of this cause, said temporary injunction be made permanent, and for an assessment of damages for whatever wrongs and injuries your orator has suffered by reason of defendant's acts and conduct as herein set out, and your orator asks for such other and further relief

to which in equity and good conscience it may in the premises be entitled.

May it therefore please your honors to grant unto your orator a writ of subpœna of the United States of America, directed to the said City of Joplin, defendant herein, commanding it on a day certain to appear and answer this bill, but not under oath, said answer under oath being hereby expressly waived, and to abide and perform such order and decree in the premises as to the court shall seem
23 proper and required by the principles of equity and good conscience.

TRIMBLE & BRALEY AND
EDWIN SILVER,
Solicitors for Complainant and of Counsel.

STATE OF MISSOURI, }
County of Jasper. }

Weare Parsons, being duly sworn, on his oath states that he is the superintendent of The Southwest Missouri Light Company the complainant to the above and foregoing amended bill of complaint; that he has read said amended bill of complaint, and knows the contents thereof, that the matters of fact charged therein are true of his own knowledge, except as to the matters therein stated on information and belief, and those matters he believes to be true.

WEARE PARSONS.

Subscribed and sworn to by Weare Parsons, (who is personally known to me) this March 20th, 1900.

CHAS. W. WESTERHEIDE,
[SEAL.] *Notary Public in and for Jasper County, Missouri.*

Commission expires November 19th, 1903.

(Exhibit "A," mentioned in above bill and made a part thereof, has been heretofore copied herein as an exhibit to original bill.)

EXHIBIT "B."

Ordinance of the City of Joplin, No. 1160.

An ordinance authorizing the calling of a special election for the purpose of submitting to the qualified voters of the city a proposition to increase the indebtedness of the city of Joplin for the purpose of building an electric light plant to be owned, controlled, and operated by the city, authorizing the council and officers of the city to issue bonds therefor, and to provide a sinking fund to pay the same.

Be it ordained by the city council of Joplin, Mo., as follows:
24 SECTION 1. That the following proposition to authorize the city council and officers of the city to increase the indebtedness of the city and issue bonds therefor, be submitted to the qualified voters of the city of Joplin, Missouri, at a special election to be

held for that purpose as hereinafter provided, on the 28th day of February, 1899, at the usual voting places in said city, to wit:

To increase the indebtedness of the city thirty thousand dollars for the purpose of building an electric light plant to be owned, controlled and operated by the city, and that the city council also provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting said indebtedness, the city reserving the right to take up said bonds or any of them after five years.

SECTION 2. The mayor of the city is hereby authorized and directed to issue a notice calling a special election on the 28th day of February, 1899, notifying the voters of the city of Joplin that said special election will be held in the several wards of the city on the day and date aforesaid, for the purpose of determining whether or not the city council and officers of the city shall be authorized to increase the indebtedness of the city in the manner and for the express purpose as is in the first section of this ordinance provided.

That the notice of said election shall be published in the Joplin Daily Globe, the Joplin Daily News, and the Joplin Daily Herald for at least fifteen (15) days before the date of holding the same. Said notice to be signed by the mayor and attested by the city clerk.

SECTION 3. The city clerk shall, as soon as the notice of the said election shall have been published as herebefore provided for, have the necessary ballots and poll books prepared and in the following form, to wit:—

To increase the debt of the city of Joplin thirty thousand dollars for the purpose of building an electric light plant to be owned, controlled and operated by the city and to issue bonds therefor and to authorize the city council to levy an annual tax sufficient to pay the interest on the said bonds as they fall due and for a sinking fund for the payment of the same.

Yes.

To increase the debt of the city of Joplin thirty thousand dollars for the purpose of building an electric light plant to be owned, controlled and operated by the city of Joplin and to issue bonds therefor and to authorize the city council to levy an annual tax sufficient to pay the interest on the said bonds as they fall due and for a sinking fund for the payment of the same.

No.

All those voting in favor of the proposition shall have written or printed on their ballots after the proposition the word Yes.

And all those voting against said proposition shall have written or printed on their ballots after the proposition the word No.

SECTION 4. This ordinance shall take effect and be in force from and after its approval and publication.

Approved this 7th day of February, 1899.

T. W. CUNNINGHAM, *Mayor.*

Attest: E. C. H. SQUIRE, *City Clerk.*

EXHIBIT "C."

Notice of Special Election.

Notice is hereby given by me, Thos. W. Cunningham, mayor of the city of Joplin, Missouri, that in pursuance to an ordinance duly passed by the city council and approved by the mayor on
26 Feb'y 7, 1899, directing and authorizing the mayor to call a special election to determine whether or not the city council of Joplin shall be authorized to increase the indebtedness of the city $30,000.00 and issue bonds therefor for the purpose of building an electric light plant to be owned controlled and operated by the city. Now therefore, notice is hereby given that a special election will be held on Tuesday, the 28th day of February, 1899, at the usual voting places, in said city, for the purpose of determining whether or not the city council shall be authorized to increase the indebtedness of the city $30,000 and issue bonds therefor and provide an annual tax sufficient to pay the interest thereon and a sinking fund therefor for the payment of said bonds, said indebtedness to be contracted for the purpose of building an electric light plant to be owned, controlled and operated by the city.

The qualified voters of the city will therefore assemble at the usual voting places in this city on the day and date named and vote upon the said proposition. All those in favor of the proposition shall have written or printed on their ballot- after the proposition, the word Yes; and all those voting against the said proposition shall have written or printed on their ballots the word No.

Given under my hand as such mayor this 8th day of February, A. D. 1899.

T. W. CUNNINGHAM, *Mayor.*

Attest: E. C. H. SQUIRE, *City Clerk.*

EXHIBIT "D."

Ordinance of the City of Joplin, No. 1165.

An ordinance declaring the result of the special election held on Tuesday, the 28th day of February, 1899, to determine whether or not the city council and city officers of Joplin, Missouri,
27 should be authorized to increase the indebtedness of the city of Joplin, Missouri, thirty thousand dollars ($30,000) for the purpose of erecting an electric light plant to be owned, controlled, and operated by the city, and to issue bonds therefor, and to authorize the mayor and city clerk to issue said bonds, to provide for the sale of the same, and to provide a sinking fund for the payment of the interest and principal of the same.

Be it ordained by the council of the city of Joplin, Mo., as follows:

SECTION 1. That it is hereby declared that at a special election held on Tuesday, February 28th, 1899, for the purpose of determin-

ing whether or not the city council and city officers should be authorized to increase the indebtedness of the city thirty thousand dollars ($30,000.00) for the purpose of building an electric light plant to be owned, controlled and operated by the city and to issue bonds therefor, that the vote on said proposition was as follows:

Total vote cast	1035
For the increase of debt, yes	813
For the increase of debt, no	222

SECTION 2. The proposition having received more than two-thirds (⅔) of the votes cast at said election, it is hereby determined and declared that said proposition carried, and that the city council is hereby authorized to issue bonds for thirty thousand dollars ($30,000.00), the amount authorized by the said election, and that the indebtedness of said city of Joplin, Missouri, be and the same is hereby increased in the sum of thirty thousand dollars ($30,000.00) for the purpose mentioned in section 1 of this ordinance.

SECTION 3. There *is* hereby issued by the proper officers of the city of Joplin, Missouri, in accordance with the provisions of section 2 of this ordinance, bonds to and for the amount of thirty thousand dollars ($30,000.00) to be known as city of Joplin electric light bonds.

28–34 SECTION 4. Said bonds shall be issued in a series of sixty (60) and shall run from number one (1) to number sixty (60) inclusive, payable to bearer, and shall bear face value of five hundred dollars ($500) each. They shall run for a term of twenty (20) years and may be redeemed by the city at its option after five (5) years, and shall bear five (5) per cent. interest per annum, payable semi-annually from date of issue until paid. Said bonds to be payable at the Miners' bank in Joplin, Missouri.

SECTION 5. Said bonds shall be in the care of the city treasurer, who shall secure the signature of the mayor and the attestation of the city clerk thereto. The city treasurer shall have exclusive possession of said bonds and shall be the sole agent of the city in disposing of the same, and all moneys arising from the sale of *said* the said bonds, shall go into a fund for the purpose of building an electric light plant to be owned controlled and operated by the city.

SECTION 6. The city council of Joplin, Missouri, shall annually levy a tax sufficient to pay the interest on said bonds and to pay the principal of said bonds as they become due.

SECTION 7. This ordinance shall take effect and be in force from and after its approval and publication.

Approved this 1st day of March, 1899.

T. W. CUNNINGHAM, *Mayor.*

Attest: E. C. H. SQUIRE, *City Clerk.*

* * * * * * *

35 Thereafter, to wit, on the 4th day of August, A. D. 1900, the defendant filed answer in the above-entitled cause.

Said answer is in words and figures as follows:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

SOUTHWEST MISSOURI LIGHT COMPANY, a Corporation, Complainant,
vs.
CITY OF JOPLIN, a Municipal Corporation, Defendant.

Now comes The City of Joplin, defendant in the above-entitled action, and answering the complaint of the plaintiff herein, says:

First. Defendant admits that complainant is and was a corporation organized under and pursuant to the laws of the State
36 of Missouri, and is a citizen of the United States for the western district of Missouri, and having its chief office at Kansas City in said State.

Second. Defendant admits that on October 7th, 1891, it being a city of the third class, under the laws of the State of Missouri, by its municipal ordinance number 441, duly passed and approved on said last-mentioned day, it granted to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Charles Ragin, doing business under the firm name and style of the "Merchants' Electric Light & Motor Company," and their successors and assigns, the right, power, privilege and authority within said city of Joplin, and such additions as might be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery, and appliances for the generation of electricity; to provide, erect, and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power and for other purposes, for the period of twenty years from the granting of said franchise, and for said purposes, said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, doing business under the firm name and style of the "Merchants' Electric Light & Motor Company" and to their successors and assigns, the right, power, privilege and authority within the city of Joplin, and such additions as might be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity; to provide, erect and maintain proper and adequate conduits and means for the districation and application and use of such electricity for the purpose of furnishing light, heat, motor power and for other purposes for the period of twenty years from the granting of said franchise, and for said purposes, said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, their successors
37 and assigns, were by said ordinance in said petition mentioned authorized and vested with full power to erect and maintain, on, over and under the streets, avenues, alleys, lanes and public grounds of said city of Joplin, poles, masts and other proper

supports, and to carry, suspend and string wires thereon and therefrom, and to lay down within such streets, avenues, alleys and lanes beneath the surface thereof, such proper pipes, wires or conduits as might be necessary or convenient for the purposes aforesaid, and to maintain and operate, repair and renew the same as might be necessary or convenient and to occupy the streets, avenues, alleys and lanes of said city as the same might be necessary.

Third. Defendant admits that it was also provided and enacted in said ordinance number 441, hereinbefore mentioned, that the said J. C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin and their successors and assigns, should not charge for electric arc lights furnished by them more than the following sum per month, namely:

For ten-o'clock circuit not to exceed the sum of eight dollars per light;

For twelve-o'clock circuit, not to exceed the sum of ten dollars per light;

For all-night circuit not to exceed the sum of twelve dollars per light.

For incandescent lights of 16 c. p. for ten-o'clock circuit not to exceed the sum of ninety cents and for all-night circuit not to exceed the sum of one dollar per light.

Fourth. Defendant admits that it was also provided and agreed in said ordinance, number 441 aforesaid, that said John C. Cox, Jr., and the other grantees therein mentioned of the franchise above referred to should maintain and keep in order, without charge to The City of Joplin, defendant herein, one light so erected on the front porch of Freeman's foundry in said city of Joplin as to
38 light the Frisco railroad crossing thereat in said city.

Fifth. Defendant further admits that it was also provided in said ordinance number 441 that said J. C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, Charles Ragin and their successors or assigns, should within ten days from and after the passage of said ordinance, file with the city clerk of the city of Joplin their written acceptance of the rights and privileges granted by said ordinance and subject to the conditions therein imposed.

Sixth. Defendant further admits that it was likewise provided in said ordinance number 441, hereinbefore mentioned, that unless said parties, meaning J. C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, their successors or assigns, should begin work within sixty days from the approval of said ordinance, meaning said ordinance number 441, and have works in operation within four months then said ordinance number 441 should be void and of no effect; and it was further provided that said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin or their successors further agree to pay for the publication of said ordinance, upon presentation of said bill for same, and upon their refusal to pay said bill or cost of publication, then said ordinance should be deemed null and void, until such conditions were complied with.

Seventh. Defendant further admits that it was provided in said

ordinance that the same should take effect and be in force from and after its publication.

Eighth. Defendant further admits that said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, doing business under the firm name and style of the "Merchants' Electric Light & Motor Company" as thereinbefore stated, did, within the time prescribed in said ordinance, number 441, file their written acceptance of the same with the clerk of said City of Joplin, defendant, in said bill of complaint, subject to all the
39 conditions imposed and contained in said ordinance; that as to whether or not said J. C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin, (doing business under the firm name and style of Merchants' Electric Light & Motor Company, as in said bill stated) did pay for the publication of said ordinance number 441 as therein required and provided, or did begin the work contemplated by said ordinance within sixty days from its approval, or did have said work in operation within four months from the time of the approval of said ordinance, or did fully comply on their part with all the obligations, covenants and conditions imposed on them by said ordinance number 441, aforesaid, this defendant has not sufficient information, on which to base a belief, and therefore denies the same. But defendant alleges that immediately after the purchase of an undivided five-sixths interest in said franchise, granted by ordinance number 441 as hereinafter stated by complainant, to wit, on June 9th, 1896: that said complainant repudiated said franchise and refused in any manner to comply with or to be bound by the conditions imposed by it.

Ninth. Defendant further admits that the work performed by said grantees, of said franchise, under said ordinance number 441, as hereinbefore referred to, consisted in the construction of an electric motor plant, the erection of poles with wires strung thereon along the streets of The City of Joplin, the defendant therein, together with all other necessary and suitable equipments and appliances for conducting and operating the business of furnishing motive power and lights to the city of Joplin and the citizens thereof, and additions thereto, admits that said power, plant, equipments and appliances for furnishing said light and motor power, together with the subsequent repairs and improvements of same were procured, erected and constructed by the grantees of said franchise at an expense to them of about fourteen thousand dollars; that the said electric light plant erected in said city of Joplin by the Merchants' Electric Light
40 & Motor Company, under the provisions of said ordinance number 441, consisted of: One brick building about 25 x 100 feet ground dimensions, and the ground on which it stood of the value of about $3,000.00; one pole line and incandescent dynamo purchased of the Joplin Gas & Coke Company of the value of about two thousand dollars.

One large arc and incandescent dynamo, combination arc and incandescent of the value of $2,000.

One thirty-five arc light dynamo of the value of $1,000.

One 150 h. p. Corliss engine and 150 h. p. stationary tubular boiler of the value of $3,000.

Extension pole line, $2,000.

Arc lamps, electric fans and materials about $1,000.

Defendant alleges that complainant did not purchase or become the owner of all of said plant, but only purchased the said pole line and extension of the value of about $4,000. The large combination arc and incandescent dynamo of the value of about $1,000—also arc lamps, electric fans and materials of the value of about $1000.

And defendant alleges that complainant did not purchase or become the owner of the building or ground, neither did they become the owner of said boiler or engine, but that said electric light plant was dismantled immediately after said sale, and that the said building, grounds, boiler and engine were conveyed to other parties and ceased to be a part of said electric light plant.

That immediately after the purchase of said part of said plant by said complainant, the said pole line was dug up, and taken away and the wires were torn down and removed from said line.

The said large arc and incandescent dynamo was removed from said plant and sent to Port Arthur, Tex., and the 35-arc dynamo was taken by complainant out of the city of Joplin and out of Jasper county; and defendant alleges that since the year of 1896,
41 there has not been kept or maintained within said city or additions thereto, the electric light plant or any part thereof, erected under the provisions of said ordinance No. 441, nor has there been any electric light plant maintained in said city, nor in any addition thereto, by complainant since said time.

And defendant alleges that John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin and their successors and assigns, were required by the provisions of ordinance number 441, to at all times keep and maintain within the city of Joplin, or within the additions thereto, an electric light and power plant, sufficient at all times to supply the reasonable demand for public and commercial lighting with- said city and additions.

Tenth. Defendant further admits that thereafter on or about June 7th, 1892, said Merchants' Light & Motor Company (which prior to said time as an unincorporated company had been operating and conducting its said electric light and motor plant), was duly incorporated pursuant to the laws of the State of Missouri, under the said name and style of Merchants' Electric Light & Motor Company, admits that said body corporate thereupon succeeded to and became the owner of the motor plant, poles, wires, equipments appliances and other property hereinbefore mentioned, owned and held by said Merchants' Light & Motor Company, at the time of and prior to its incorporation as aforesaid, including an undivided five-sixths interest of the franchise and privilege granted by said ordinance number 441 of defendant to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin under the firm name and style of the "Merchants' Light — Motor Company," and as said successor and owner said Merchants' Electric Light & Motor Company as said body corporate, operated and conducted its said motor

and light plant and business aforesaid until the sale and transfer of part of the same to the complainant as heretofore stated in this answer.

42 Eleventh. Defendant admits that thereafter, on December 28th, 1895, said complainant was duly incorporated (as in complainant's bill thereinbefore stated), under the laws of the State of Missouri, full power being conferred upon it by its charter to operate electric and gas works and appliances to furnish light and power to the city of Joplin, to the inhabitants thereof and its vicinity.

Twelfth. Defendant admits that thereafter, on June 9, 1896, by its bill of sale bearing said date, executed in its name by its president, by authority of its board of directors, said "Merchants' Electric Light & Motor Company" did in consideration of the sum of fifteen thousand dollars, paid to it by The Southwest Missouri Light Company, complainant, sell, assign, and deliver to complainant a part of the property of said electric light & motor company, as above stated, including an undivided $\frac{4}{5}$ interest in the franchise granted by the said ordinance number 441 of defendant therein, (and therein specifically mentioned and set forth,) to said John C. Cox and others doing business under the firm name and style of "The Merchants' Electric Light & Motor Company" and of which franchise said last-mentioned company and body corporate as aforesaid had become and was the assignee of said undivided five-sixths interest and defendant has been informed and believes that an undivided one-sixth interest in said franchise was never assigned to complainant, but is now owned by said J. V. Pierce, that defendant has been informed and believes that before the said assignment by Merchants' Electric Light & Motor Company to complainant, and whilst said Merchants' Electric Light & Motor Company was operating under the provisions of the franchise granted by said ordinance number 441, said Merchants' Electric Light & Motor Company entered into contracts with various parties, among whom were the Keystone Hotel Company, Mose Weiler, Messrs. Christman & Bliedung, House of Lords, Leonard Metle. Company and Lee More, but that after the aforesaid assignment to complainant by said Merchants' Electric Light & Motor Company, said complainant repudiated said contracts so made under the provisions contained in ordinance No. 441, and refused to furnish any of the lights to be furnished under said contracts.

43 That after the incorporation of the Merchants' Electric Light & Motor Company, as in complainant's bill alleged, but before the assignment and sale of a part of its said property and five-sixths interest in said franchise, an arrangement was entered into by and between the said city of Joplin and the said Merchants' Electric Light & Motor Company, by which the said Merchants' Electric Light & Motor Company agreed to maintain and keep in order without charge to the said City of Joplin, defendant herein, one light erected on poles so erected in front of Freeman's foundry in said city of Joplin, as to light the Frisco railway

crossing thereat in said city, in lieu of said light to be so kept and maintained on the front porch of said Freeman's foundry.

And that said Merchants' Electric Light & Motor Company did for a long time under said arrangement maintain said light in order free of charge to said city, and did maintain the same until the sale to said complainant on the 9th day of June, 1896. But defendant alleges that immediately after said sale, the said complainant presented a bill to the said defendant city for the maintenance of said light and refused to maintain said light free of charge to said city, either on the front porch of Freeman's foundry, as required by ordinance No. 441 or on poles in front of said Freeman's foundry in said city or at any place in said city; that said complainant immediately after said sale repudiated the provisions of said ordinance, requiring the maintenance of said light and have refused to be bound by the same, from the time of the said assignment up to the voting of the bonds, and the building of the said electric light plant of said city, and have failed and refused ever since said assignment to be bound by the provisions of said franchise, relating to the maintenance of said light, and have ever since said time refused to comply with any of its provisions whatever.

Thirteenth. Defendant admits that complainant did thereupon enter upon the possession of a part of said property, equipments, and appliances as herein stated, but denies that it entered upon the possession of all of them; admits that it took an assignment
44 of an undivided five-sixths interest in said franchise granted by said ordinance number 441, but denies that at any time since the said assignment has it been conducting and operating a light business under such franchise granted by said ordinance number 441.

Fourteenth. Defendant admits that said defendant, The City of Joplin, has constructed an electric light plant to be owned, controlled and operated by said city, and has erected lights on the streets of said city and is furnishing its streets and alleys with arc electric lighting; admits that said city, the defendant herein, by its mayor, council and other officers had prior to this suit also erected poles along the streets and alleys of said city, and prior to said suit strung the same with wires and had prior thereto purchased transformers and established a schedule of rates and prices and was before said suit soliciting patrons and customers and had, since February 23rd, 1900, and up to the time of the granting of this injunction was doing ordinary commercial lighting in said city and in the additions thereto.

Fifteenth. Defendant admits that it was entering in the ordinary manner into legitimate competition with complainant in the matter of supplying and furnishing for pay the inhabitants of defendant and its additions, incandescent light or other electric lighting for their residences, places of business and like places but denies that the defendant would thereby deprive complainant of rentals, income and profits in the matter of supplying said inhabitants aforesaid with electric lighting under the franchise granted by ordinance number 441 hereinbefore mentioned.

Sixteenth. Defendant further admits that the aforesaid acts and proceedings of the said defendant hereto and of its officers and servants in erecting its own electric light plant and in furnishing and supplying its inhabitants with incandescent or other electric lights, and in otherwise entering into competition with complainant in the matter of doing ordinary commercial electric lighting, in said
45 city of Joplin, and its additions as in complainant's bill set out, have been done and purport to have been done, under the authority of a two-thirds vote of the electors of said city authorizing the increase of its municipal indebtedness for the purpose of erecting said electric plant and also under and pursuant to ordinances of said city duly passed by its council and approved by its mayor.

Seventeenth. Defendant denies that complainant has a large amount of capital invested in said business of furnishing and supplying to the inhabitants of said city of Joplin and its vicinity electric lighting and electric motor power, under said franchise granted by ordinance number 441 of said city; defendant denies that said franchise granted by ordinance No. 441 is a valuable one, denies that defendant's property will be greatly impaired or in any manner destroyed if defendant is permitted to continue its competition with complainant in supplying and furnishing to the inhabitants and residents of defendant said electric lighting as above stated; denies that complainant would be deprived of rentals, profits, incomes or sources of revenue it would otherwise receive from the citizens and inhabitants of Joplin in the business of furnishing and supplying to them electric lighting under the said franchise granted by said ordinance No. 441.

But defendant admits that complainant is and at the time of bringing this suit was the owner of a part of a town lot with a one-story building thereto, used for an office in said city, of the value of two thousand dollars and personal property within said city of the value of five thousand dollars used by complainant in doing a lighting business in defendant city, the electricity being generated at a plant at Grand Falls in Newton county, about five miles from said city of Joplin.

Eighteenth. Defendant denies that the acts of defendant in entering into competition with complainant in the matter of supplying and furnishing to the citizens of defendant and its vicinity electric lighting, violates or sets at naught to complainant's injury or
46 damage, the clause of the Constitution of the United States, (contained in article 1, section 10 of said instrument), which provided that no State shall pass any law impairing the obligation of contracts, neither do they violate or impair the provisions of the Constitution of the United States (contained in article XIV, section 1 thereof), which provides that no State shall deprive any person of property without due process of law.

Defendant denies that defendant has done or threatened any wrongs or injuries to complainant or to its property.

Defendant admits that the matter in dispute herein exceeds the sum of two thousand dollars exclusive of interest and costs.

Nineteenth. That on the 21st day of February, 1894, The City of Joplin, defendant, party of the first part, entered into a contract in writing with the Southwestern Electric Light & Water Power Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, party of the second part, by E. L. Martin, its president, attested by its corporate seal, (a copy of which is hereto attached and marked Exhibit "A,") said corporation being composed substantially of the same stockholders that now compose complainant corporation, by the terms of which contract the said Southwestern Electric Light & Water Power Company agreed for a period of five years from the first day of May, 1894, to the first day of May, 1899, as follows:—

"That said second party, its successors or assigns, agree to be and are bound in the sum of ten thousand dollars, with good and sufficient security, to furnish said city the first party, with as many arc lamps to light the streets of said city as the council may desire and by resolution order from time to time; said lamps to be of full two-thousand-candle power, kept and maintained at that standard and lighted at sunset and to continue lighted till sunrise, at all times at and for the consideration mentioned.

SECTION 3. That said second party shall maintain said
47 lamps and keep them in repair, supplying them with carbons and light and extinguish the same, for which said party of the first part, the city, shall and hereby agrees to pay the said second party at the rate of seventy-two dollars per year for each and every arc light so furnished, to be paid in monthly warrants, drawn upon the city treasury, provided, however, the said second party shall receive no pay for any lamp or lamps not lighted and kept burning according to this contract."

That the defendant, The City of Joplin, duly complied with and performed all the conditions of said contract, on its part to be performed.

That Southwestern Electric Light & Water Power Company party of the second part, never furnished any bond or security for the performance of said contract, as required by its terms.

That at the time of the making of said contract there was a mortgage or deed of trust on all the property and assets of said Southwestern Electric Light and Water Power Company, for the sum of about two hundred thousand dollars, and that about the — day of April, 1896, said mortgage was foreclosed and all the assets and property of said corporation were sold and conveyed away from said corporation, leaving said last-named corporation insolvent and unable to perform said contract.

That defendant is informed and believes that said foreclosure was brought about by the stockholders of the complainant and that the said foreclosure was practically a reorganization of the Southwestern Electric Light and Water Power Company, and that all the property, rights, privileges and franchises of said corporation were conveyed direct to complainant at said trustee's sale or were conveyed at said sale to a trustee for complainant.

That immediately after said sale complainant repudiated said

contract and refused to be bound by any of its terms and refused from said — day of April, 1896, to the time of the issuing of the bonds and the building of the light plant of said city defendant, to enter into any satisfactory contract with said city to light
48 the streets of said city, although often requested by defendant so to do.

That during all the time from the foreclosure and sale of the assets and property of the said Southwestern Electric Light and Water Power Company, in April, 1896, up to the time of the voting of the bonds of said city and the building of said city plant the said defendant city had no contract with any individual or corporation to light the streets of said city, except a temporary arrangement with said complainant to furnish lights to light the streets of the said defendant city, and which was attended with much annoyance and inconvenience to said city and its citizens, that is to say, that the lights furnished were of a very poor quality and not nearly of two-thousand-candle power; that they were subject to frequent interruptions and were only kept burning about two-thirds of the time.

The defendant is informed and believes that from the time that complainant commenced business in 1896 until the voting of the bonds and the building of the plant of the defendant city, as stated in plaintiff's bill of complaint, there was no person or corporation in or near said city that had the capacity or facilities to adequately supply the demand for commercial and street lighting in the district in which the complainant did a lighting business.

Twentieth. That the said city of Joplin and the territory contiguous and contributary to it, has and for the last four years had a population of about 100,000 people; that it is and during all of the said time has been a district engaged in mining of which Joplin has been the center as well as a railroad center and there is constantly attracted to it a large floating population; that defendant has a population of thirty thousand people; that for this reason and others it is necessary that its streets, alleys and public grounds should be at all times adequately lighted with reliable street lights; that on the first day of September 1899, the complainant ab-
49 solutely refused to longer furnish said city with any lights for its streets, alleys or public grounds; that from said date until the 16th day of February, 1900, the time of the completion of said city light plant, the said streets, alleys and public grounds in said city were in darkness. That the defendant is informed and believes that all the property of complainant is and has been ever since it was incorporated, subject to a large mortgage or deed of trust of about $150,000 and which is liable to foreclose at any time, and which constitutes a prior lien to any contract the city might have made with the complainant and which foreclosure would have terminated any contract the city defendant might have made with the said complainant. And the defendant alleges that the complainant never at any time prior to the building of the said electric light plant of defendant city offered to enter into a time contract with said defendant city, and give security for its performances.

Twenty-first. The defendant alleges that complainant did not apply for a temporary injunction in this case in good faith and that the same was obtained for the purpose of perpetrating a fraud on this honorable court and for the purpose of bringing its process into disrepute; and defendant has been informed and believes that in pursuance of said fraud, complainant immediately after the grant of the writ of temporary injunction in this case adopted a rule that all new subscribers desiring commercial lighting in the city of Joplin and all additions thereto should enter into a written contract to take said lights and pay for them for the period of one year from the time of making said contracts and from said time they refused and still refuse to furnish commercial lighting to any person who refuses to enter into such contract; the defendant further alleges that said contract required by complainant, and the refusal of complainant to furnish light without such contract is a hardship upon those who desire commercial lighting, and in clear violation of said ordinance 441. The defendant is informed and believes that no such rule requiring the making of such contracts was en-
50 forced by complainant prior to the granting of said temporary injunction in this case, and that no such contracts would have been required and no such rule would have been enforced by complainant but for the granting of the temporary injunction, and that its sole purpose and office was and is to secure the commercial lighting of said city and its inhabitants for the year beyond the dissolution of said injunction if this honorable court should in its judgment see fit to dissolve the same.

And the defendant further alleges that it is and will be impracticable to operate said city light plant for the street lighting alone without running the same in connection with commercial lighting. That to operate said city plant for the sole purpose of lighting the streets, alleys, and public grounds of said city will entail an expense far greater than would be a reasonable charge for such lighting and that the operation of said plant for said street lighting alone will result in large and unnecessary taxes levied upon the tax-payers of said defendant city including the complainant.

Twenty-second. That the officers of the defendant city never intended or threatened to conduct said commercial lighting to injure or destroy complainant's business, but to assist in supplying a demand for commercial lighting that complainant could not supply. That defendant established a schedule of rates such as were usual and customary for such lighting and at the time of voting for said bonds and commencing the electric light plant of said defendant city.

Defendant has been informed and believes that complainant had not sufficient capacity to supply the demand for commercial lighting in the city of Joplin and in the territory in which complainant did commercial lighting.

That said city light plant can be operated in connection with commercial lighting so that there will be no expense to the defendant city nor its tax-payers for such operation. That the granting
51 of the injunction in this case has already cost large sums of

money which must be paid by the tax-payers of defendant city including complainant.

That complainant had full notice and knowledge of the voting of the bonds and the erection of said plant by said defendant city long before said bonds were voted or said plant was built and made no objection or protest to the building of the same and that the construction of said plant by said city cost said city over forty thousand dollars.

That the continuing of the injunction restraining said city from doing commercial lighting will render the said plant valueless to said city and will entail great loss and damage to said defendant city and its tax-payers, including complainant, and that complainant in equity and good conscience ought not to be permitted but should be estopped from further maintaining this suit.

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint material to be answered according to its best knowledge and belief, humbly prays this honorable court to enter its decree that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to the honorable court may seem meet and in accordance with equity.

C. H. MONTGOMERY,
City Counsellor and Solicitor for Defendant.
HUGH DABBS,
Of Counsel for Defendant.

STATE OF MISSOURI, } ss:
County of Jasper, }

J. H. Spencer, being duly sworn on his oath states: That he is the mayor of The City of Joplin, the defendant in the above-entitled cause; that he has read the above answer and knows the contents thereof; that the matters of fact charged therein are true of his own knowledge except as to matters therein stated on information and belief, and those matters he believes to be true.

J. H. SPENCER.

52–55 Subscribed and sworn to by J. H. Spencer (who is personally known to me), this August 3rd, 1900.
My commission expires August 16th, 1903.

MARY E. CODY,
[SEAL.] *Notary Public in and for Jasper County, Mo.*

* * * * * * *

56–58 In the Circuit Court of the United States, Western District of Missouri, Western Division.

SOUTHWEST MISSOURI LIGHT COMPANY, a Corporation, Complainant,
vs.
CITY OF JOPLIN, a Municipal Corporation, Defendant.

Replication.

This replicant, The Southwest Missouri Light Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, City of Joplin, for replication thereunto saith: That it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant; that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters or things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

TRIMBLE & BRALEY,
Solicitors for Complainant.

* * * * * * *

59 Thereafter, to wit, on Tuesday, the 18th day of February, 1902, the same being a day of the regular November term of said court, and the Honorable Smith McPherson, district judge for the southern district of Iowa presiding, the following decree was filed and entered of record in the above-entitled cause:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE SOUTHWEST MISSOURI LIGHT COMPANY, Complainant,
vs.
THE CITY OF JOPLIN, Defendant.
} In Equity. No. 2419.

Decree.

This cause coming on to be heard upon original and amended bills of complaint and the answer of the defendant thereto, and the testimony taken herein, as well as all of the proceedings and papers herein filed, this cause was then argued by Messrs. Trimble & Braley and Jno. A. Eaton, counsel for the complainant, The Southwest Missouri Light Company, and by Messrs. Lathrop, Morrow, Fox & Moore, and C. H. Montgomery, counsel for the defendant, and the court being fully advised in the premises, upon consideration thereof, doth find, order, adjudge and decree as follows, to wit:

That upon complainant's amended bill of complaint, the defendant's answer thereto, the complainant's replication and the evidence introduced and heard by the court, the issues all and singular be and they are hereby found for the complainant and against the defendant, and the court doth order, adjudge and decree that a perpetual injunction be and the same is hereby awarded against the defendant, The City of Joplin, its mayor and councilmen, its agents, officers and servants, enjoining and restraining them from
60 supplying or furnishing to the inhabitants, residents or any other person, firm or corporation within said city or any addition thereto or extension thereof, electric lights, either incandescent or arc or in any other form or manner, for and as commercial or private lighting for and during the full time term and period mentioned and stated in ordinance No. 441 of said city, being entitled: "An ordinance granting to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, doing business under the firm name and style of the Merchants' Electric Light & Motor Company, the right to erect and operate electric light and motor plants, with necessary conduits and appliances for the transmission, distribution and application of electric light and motor power and regulating the same," to wit, the term of twenty years from and after October 7th, 1891.

And that the complainant have and recover costs against the defendant to be taxed by the clerk or as directed by the court.

Done in open court at Kansas City, Missouri, February 18, 1902.

(Signed) SMITH McPHERSON, *Judge*.

Thereafter, to wit, on the 1st day of March, A. D. 1902, defendant filed an assignment of errors in the above-entitled cause, which said assignment of errors is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE SOUTHWEST MISSOURI LIGHT COMPANY, Complainant,
vs.
CITY OF JOPLIN, Defendant.

Assignment of Errors.

Now on this first day of March, 1902, at the November
61 term, 1901, of the said circuit court of the United States, for the western division of the western district of Missouri, comes the defendant, City of Joplin, by C. H. Montgomery, and Samuel W. Moore, its solicitors, and says that in the record and proceedings in the above-entitled cause there was manifest error in this, to wit:

1. That by the said record aforesaid, it appears that the order, judgment and decree aforesaid was given for the complainant, Southwest Missouri Light Company, against the defendant, City of Joplin, whereas, by the law of the land the said judgment ought to have

been given for the said defendant City of Joplin and against the said plaintiff, Southwest Missouri Light Company.

2. That the circuit court erred in holding that the bill of complainant, Southwest Missouri Light Company, was sufficient to state a cause of equitable relief against the defendant City of Joplin.

3. That the circuit court erred in holding that the act of the Missouri legislature of 1891 (Laws of Mo., 1891, p. 60), gave to cities of the third class the right to erect, maintain and operate electric light works or to contract for their erection, maintenance and operation, in the alternative, and that such act did not confer upon said cities the right to exercise both of said powers at the same time.

4. That the circuit court erred in holding that the ordinance of the city of Joplin of February 7, 1899, and proceedings subsequent thereto, impaired the obligation of the contract with the complainant, contained in the ordinance of October 7, 1891, granting a franchise to the complainant's assignors.

5. That the circuit court erred in holding that it was an implied condition in the franchise of October 7, 1891, to complainant's assignors, that the city of Joplin would not engage in the erection, maintenance and operation of an electric light plant for the
62 supply of electric light to its inhabitants during the period of said franchise.

6. That the circuit court erred in holding that the act of the legislature, (Laws of Mo., 1891, p. 60), conferred upon the city of Joplin, the right to construct, maintain and operate an electric light plant for the supply of its inhabitants with electric light or to contract for the erection, maintenance and operation of an electric light plant for the same purpose, in the alternative, but that both powers were not conferred, and at the same time, in holding that the court had jurisdiction to entertain the bill and render a decree against the defendant.

7. That the circuit court erred in not finding that the complainant failed in a substantial degree to comply with the terms of the franchise of October 7th, 1891, and for that reason was not entitled to the equitable relief prayed for.

8. That the circuit court erred in not holding that the complainant had repudiated the franchise of October 7, 1891, upon which complainant bases its claim for equitable relief, and for that reason was not entitled to the relief prayed for.

9. That the circuit court erred in holding that the ordinance of the city of Joplin of October 7, 1891, upon which complainant bases its claim for equitable relief was exclusive in its character and disabled The City of Joplin, defendant, from afterwards erecting, maintaining and operating an electric light plant of its own for the supply of electric light to its inhabitants.

Wherefore, said defendant prays that the said order, judgment and decree of the said circuit court of the United States for the western division of the western district of Missouri, may be reversed by the Supreme Court of the United States and a decree be entered in favor of the defendant City of Joplin, and for such further pro-

ceedings herein as may be in conformity with justice, equity and the law of the land.

CITY OF JOPLIN,
By C. H. MONTGOMERY AND
SAMUEL W. MOORE,
Its Solicitors of Record.

63–65 On the same day, to wit, on Saturday, the 1st day of March, A. D. 1902, defendant filed its petition for appeal in the above-entitled cause, which said petition for appeal, with the order allowing said appeal, is in words and figures as follows:

In the Circuit Court of the United States within and for the Western Division of the Western District of Missouri.

SOUTHWEST MISSOURI LIGHT COMPANY, Respondent,
vs.
CITY OF JOPLIN, Appellant. } No. 2419.

The above-named defendant, City of Joplin, conceiving itself aggrieved by the decree entered on February 18th, 1902, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States and it prays that this appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

C. H. MONTGOMERY,
SAMUEL W. MOORE,
Attorneys for Defendant and Appellant, City of Joplin.

KANSAS CITY, MO., *March 1st*, 1902.

And now, to wit, on March 1st, 1902, it is ordered that the appeal be allowed as prayed for, cost bond fixed at $200.00 unless waived. If waived, no bond required.

(Signed) SMITH McPHERSON, *Judge.*

* * * * * * *

66 In the Circuit Court of the United States, Western District of Missouri, Western Division.

SOUTHWEST MISSOURI LIGHT COMPANY, a Corporation, Complainant,
vs.
THE CITY OF JOPLIN, a Municipal Corporation, Defendant.

STATE OF MISSOURI, } *ss:*
County of Jackson, }

GEORGE M. MYERS, a witness called on behalf of the complainant herein, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

Direct examination by Mr. EATON:

By Mr. EATON: I will introduce the articles of association and certificate of incorporation of the complainant.

Said articles of association, and certificate of incorporation are in words and figures as follows, to wit:

Articles of Association of the Southwest Missouri Light Company.

Know all men by these presents: that we, the undersigned, Arthur E. Stilwell, E. L. Martin, George M. Myers, J. McD. Trimble, Charles A. Braley, and Arthur E. Stilwell, trustee, do hereby associate ourselves together for the purpose of being incorporated under the provisions of article 8, chapter 42, of the Revised Statutes
67 of Missouri, 1889, and under all laws revisory or amendatory thereof, and do hereby agree upon and adopt the following as our articles of association:

First. The name of this corporation shall be "Southwest Missouri Light Company."

Second. This corporation, and the principal office thereof, is to be located in Kansas City, in the county of Jackson and State of Missouri.

Third. The amount of the capital stock of this corporation has been fixed at and shall be three hundred thousand dollars ($300,000.00), which shall be and is divided into three thousand (3,000) shares of the par value of one hundred dollars ($100) each, fifteen hundred (1500) of which shares aggregating the principal sum of one hundred and fifty thousand dollars ($150,000) shall be known as and be "common stock" and fifteen hundred (1500) of which shares aggregating the principal sum of one hundred and fifty thousand dollars ($150,000) shall be known as and be five per cent. non-accumulative "preferred stock." All of said capital stock has been in good faith subscribed and the whole thereof actually paid up in lawful money of the United States and is in the custody of the persons hereinafter named as the first board of directors.

Fourth. The names and places of residence of the several shareholders and the number of shares of both common and preferred stock subscribed by each are as follows:—

Of common stock.

Arthur E. Stilwell, Kansas City, Missouri.....	10 shares
E. L. Martin, Kansas City, Missouri.....	10 shares
George M. Myers, Kansas City, Missouri.....	10 shares
J. McD. Trimble, Kansas City, Missouri.....	10 shares
Charles A. Braley, Kansas City, Missouri.....	10 shares
Arthur E. Stilwell, trustee, Kansas City, Missouri.....	1450 shares

Of preferred stock.

Arthur E. Stilwell, trustee, Kansas City, Missouri.....	1500 shares

68 Fifth. The board of directors of this corporation shall consist of five persons and the names of those agreed upon to act as the board of directors for the first year are as follows: Arthur E. Stilwell, E. L. Martin, George M. Myers, J. McD. Trimble and Charles A. Braley.

Sixth. This corporation shall continue to exist for the term of fifty (50) years from and after the date of its incorporation.

Seventh. The purposes for which this corporation is formed, are to buy, own, establish, build, maintain and operate electric and gas works and appliances; to furnish light and power to the cities of Joplin, Webb City, and neighboring towns and cities and to the inhabitants thereof and vicinity; to buy, own, establish, build and maintain dams, ditches, pipes, races and other appliances to furnish water power for its use and for the use of the said cities of Joplin and Webb City and the inhabitants thereof and vicinity for hire and compensation.

In testimony whereof, we have hereunto set our hands and affixed our seals this 28th day of December, A. D. 1895.

A. E. STILWELL. [SEAL.]
E. L. MARTIN. [SEAL.]
GEORGE M. MYERS. [SEAL.]
J. McD. TRIMBLE. [SEAL.]
CHARLES A. BRALEY. [SEAL.]
ARTHUR E. STILWELL, *Trustee.* [SEAL.]

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that on this 28th day of December, 1895, before me, a notary public, in and for said county, personally appeared Arthur E. Stilwell, E. L. Martin, George M. Myers, J. McD. Trimble, Charles A. Braley and Arthur E. Stilwell, trustee, to me known to be the persons described in and who executed the foregoing
69 instrument and articles of association, and severally acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at my office in Kansas City, in the county of Jackson and State of Missouri, the day and year last above written.

My commission expires on the 9th day of August, 1897.

[SEAL.] JNO. M. MASON,
Notary Public in and for Jackson County, Missouri.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, O. H. Queal, recorder of deeds within and for the county aforesaid, do hereby certify that the foregoing and annexed instrument of writing was, on the 6th day of January, A. D. 1896, at 12 o'clock 30 minutes p. m., duly filed for record in this office, and with the certificate of acknowledgment thereon endorsed, is recorded in the records of this office in Book B, No. 609 at page 371.

In witness whereof, I hereunto set my hand and affix
[SEAL.] the seal of said office, at Kansas City, Mo., the day and year last aforesaid.

O. H. QUEAL, *Recorder,*
By H. W. BASTMAN, *Deputy.*

No. 8655.

THE STATE OF MISSOURI:

Certificate of Incorporation.

Whereas, an association organized under the name of Southwest Missouri Light Company, has filed in the office of the secretary of state article- of association or agreement in writing as provided by law, and has, in all respects complied with the requirements of law governing the formation of private corporations, for manufacturing and business purposes:

70 Now, therefore, I, Alexander A. Leseuer, secretary of state of the State of Missouri, in virtue and by authority of law, do hereby certify that said association has, on the date hereof, become a body corporate, duly organized under the name of Southwest Missouri Light Company, and is entitled to all the rights and privileges granted to manufacturinf and business corporations under the laws of this State; and that the amount of capital stock of said corporation is three hundred thousand dollars.

In testimony whereof, I hereunto set my hand and affix the great seal of the State of Missouri.

[SEAL.] Done at the city of Jefferson, this 7th day of January, A. D. eighteen hundred and ninety-six.

A. A. LESEUER,
Secretary of State.

By Mr. EATON: I will introduce a trustee's deed from the Southwestern Electric Light & Water Power Company by the Missouri Kansas & Texas Trust Company, trustee, to the Southwest Missouri Light Company, dated the 20th of April, 1896.

Said trustee's deed is in words and figures as follows, to wit:

Trustee's Deed.

Whereas, the Southwestern Electric Light & Water Power Company, by its deed of trust, dated the 19th day of August, 1890, and recorded in the recorder's office in Newton county, Missouri, on the 22nd day of September, 1890, in Book S for recording mortgages, at page 178, and further recorded in Jasper county, Missouri, on the 27th day of September, 1890, in Book 50 for recording mortgages at page 161, did convey to the undersigned, Missouri, Kansas & Texas Trust Company, trustee, the property hereinafter described, in trust to secure the sum of two hundred thousand dollars, ($200,000) as evidenced by two hundred bonds of the said Southwestern Electric Light and Water Power Company, of the denomination of one thousand dollars ($1000) each, each of said bonds being dated August 19, 1890, payable to bearer on the first day of June,

71 1905, with interest thereon at the rate of six per cent. per annum from and after the first day of June, 1890, the first year's interest being payable as a whole on the first day of June, 1891, and the interest for the remaining years to be payable in semi-

annual instalments on the first day of December and the first day of June, in each year, evidenced by interest coupons attached to said bonds; and

Whereas, default was made in the payment of the interest coupons falling due on the first day of June, 1895, and such default having continued for a space of more than six months after maturity and demand therefor, and a majority of the bondholders representing a majority in value of all the bonds issued under and secured by said deed of trust, having determined and notified said trustees that they required that the principal of all of said bonds became at once due and payable and all of said bonds having thereby become due and payable by reason whereof the said Missouri Kansas & Texas Trust Company did, at the request of, and upon written notice by the holders of a majority of said bonds issued and outstanding, proceed to execute the powers to it given by said deed of trust and take possession of the property hereinafter described, and having previously given at least sixty days' public notice by advertisement as provided by said deed of trust and the laws of the State of Missouri, of the date, book and page of the record of said deed of trust, the grantor, and the time, terms and place of sale, and the description of the property to be sold, the said Missouri, Kansas & Texas Trust Company, trustee as aforesaid, did on Friday, the 17th day of April, A. D. 1896, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, at the front door of the county court-house in Joplin, Jasper county, Missouri, expose for sale and sell at public vendue, for cash, to the highest bidder, all of the Southwestern Electric Light & Water Power Company's electric light plant, together with all buildings, permanent structures, fixtures, pole lines and shops, as are located in Jasper county, Missouri, and all the tools, wires, lamps, easements, contracts, choses in
72 action and personal property of every kind and description wherever located and used in connection with said plant and described in said deed of trust, and also all the personal property of whatsoever description which has been acquired by said grantor to be used in connection with said plant since the date of said mortgage and owned by said Southwestern Electric Light & Water Power Company on said 17th day of April, 1896, and also all the rights, privileges, immunities and franchises at the time said mortgage was executed or held, owned and enjoyed by the Southwestern Electric Light & Water Power Company, upon said 17th day of April, 1896, and also all of lot numbered 176 in Murphy's First addition to Murphysburg in Joplin, Jasper county, Missouri, and at said sale the Southwest Missouri Light Company, a corporation organized under the laws of the State of Missouri, being the highest and best bidder for all of the above-described property, for the sum of ten thousand dollars ($10,000.00) the above-described property was struck off and sold to said Southwest Missouri Light Company at that price and sum.

And on Saturday, the 18th day of April, A. D. 1896, the said Missouri, Kansas & Texas Trust Company, trustee as aforesaid, in accord-

ance with the advertisement above mentioned, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said date, at the front door of the building used for the county court-house in the city of Neosho, Newton county, Missouri, did expose for sale and sell at public vendue, for cash, to the highest bidder, all and singular the electric light plant and appliances for the transmission of water power, together with all structures, fixtures, pipes, shops, engines, machinery, dynamos, poles, wires, easements located in the county of Newton, State of Missouri, and known as the electric light plant and water power of the Southwestern Electric Light & Water Power Company; also the following-described real estate, to wit:

Ten (10) acres off of the east side of the northeast quarter
73 (¼) of the southwest quarter (¼) of section number twenty-eight (28) also part of the northwest quarter (¼) of the southeast quarter (¼) of said section, described by metes and bounds as follows: Beginning at a flint stone, it being the northwest corner of said northwest quarter (¼) of said southeast quarter (¼) thence running east ten (10), rods to a limestone; thence south twenty-three (23) degrees, fifteen (15) minutes east forty-four (44) rods and twenty-two (22) links to a limestone; thence west three (3) rods to a limestone; thence south twenty-one (21) degrees fifteen (15) minutes east nine (9) rods and fourteen and one-half (14½) links to a limestone; thence south fifty-eight (58) degrees west thirty-two (32) rods and nineteen (19) links to a flint stone on the quarter-section line dividing said southwest quarter (¼) of said section twenty-eight (28) from said southeast quarter of said section; thence north on said quarter-section line sixty-seven (67) rods and one (1) link to the place of beginning, containing eight (8) acres more or less, all being in section number twenty-eight (28), township twenty-seven (27), range thirty-three (33), and including the water power known as the Grand Falls, with all rights appertaining thereto.

Also that part of the northwest quarter (¼) of the northeast quarter (¼) of section twenty-eight (28), township twenty-seven (27), of range thirty-three (33), which is situated lying and being south of a stream of water known as Shoal creek and situate south of the center of the main channel thereof.

Also part of the northwest one-fourth (¼) of the southeast one-fourth (¼), section twenty-eight (28), township twenty-seven (27), range thirty-three (33), described as follows:

Beginning at a flint stone, it being the northwest corner of the said northwest one-fourth (¼) of the southeast one-fourth (¼); thence east ten (10) rods to a limestone; thence south twenty-three (23) degrees, fifteen (15) minutes east forty-four (44) rods and twenty-two (22) links to a limestone; thence west three (3) rods to a limestone; thence south twenty-one (21) degrees, fifteen (15)
74 minutes, east nine (9) rods and fourteen and one-fourth (14¼) links to a limestone; thence south fifty-eight (58) degrees west thirty-two (32) rods and nineteen (19) links to a flint stone on the quarter-section line dividing said southwest one-fourth (¼) of said section twenty-eight (28) from the southeast quarter (¼) of said

section; thence north on said quarter-section line sixty-seven (67) rods and one (1) link to beginning:—containing eight (8) acres and including the water power known as the Grand Falls.

Also beginning at the southwest corner of the west half (½) of the southwest one-fourth (¼) of the northeast one-fourth (¼) of section twenty-eight (28), township twenty-seven (27), range thirty-three (33), thence east on the south line of said quarter of quarter section one hundred and sixty-five (165) feet; thence northeasterly in a straight line to a point three hundred (300) feet south and two hundred (200) feet east of the northwest corner of said quarter of quarter section; thence northeasterly in a straight line to a point on the north line of said west half (½) of the southwest quarter (¼) — northeast quarter one hundred and twenty-five (125) feet north of the northeast corner of said west one-half (½); thence west on said north line to the northwest corner of said quarter (¼) of quarter (¼) section; thence south on the west line to the beginning; containing seven (7) acres; and at said sale the Southwest Missouri Light Company being the highest and best bidder for all of the property last above described, at and for the sum of twenty thousand (20,000) dollars, the same was struck off and sold to the said Southwest Missouri Light Company at that price and sum.

Now therefore, know all men by these presents, that the Missouri, Kansas & Texas Trust Company, the undersigned trustee, in consideration of the premises and of the sum of thirty thousand (30,000) dollars, to it paid by the said Southwest Missouri Light Company, does bargain, sell and convey unto the said Southwest Missouri Light Company all and singular the property hereinabove described and described in the said deed of trust hereinabove
75 mentioned.

To have and to hold the same unto the said Southwest Missouri Light Company and unto its successors and assigns forever.

In witness whereof, the said Missouri, Kansas & Texas Trust Company, trustee, has caused these presents to be signed by its vice-president, its president being absent, and its corporate seal to be hereunto affixed, attested by its 2nd ass't secretary, this 20th day of April, 1896.

MISSOURI, KANSAS & TEXAS
TRUST COMPANY, *Trustee*,
[SEAL.] By JACQUES T. NOLTHENIUS,
4th Vice-President.

Attest: C. S. MOSHER,
2nd Ass't Secretary.

STATE OF MISSOURI, } ss:
County of Newton, }

I, A. C. Beach, recorder of deeds within and for the county aforesaid, do certify that the instrument in writing hereto attached, with the certificate thereon, was filed for record in my office on the 8th day of May, 1896, at 10 o'clock and — minutes a. m., and that the same is duly recorded in said office in Book 40 for recording trustees' deeds at page 411.

In witness whereof, I have hereunto set my hand and affixed the seal of said office. Done at office in Neosho, Mo., this 8th day of May, 1896.

[SEAL.]

A. C. BEACH,
Recorder of Deeds,
By M. E. SIMS, *Deputy.*

STATE OF MISSOURI, }
County of Jackson, } ss:

On this 22nd day of April, 1896, before me appeared Jacques T. Nolthenius, to me personally known, who being by me duly sworn, did say that he is the vice-president of the Missouri, Kansas
76 & Texas Trust Company, and that the seal affixed to the above and foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and the said Jacques T. Nolthenius acknowledged said instrument to be the free act and deed of said corporation as trustee.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed my official seal in Kansas City, Missouri, this 22nd day of April, 1896.

My term expires September 6, 1897.

RICHARD H. STEWART,
Notary Public in and for Jackson County, Missouri.

STATE OF MISSOURI, }
County of Jasper, } ss:

In the recorder's office.

I, J. A. Sigler, recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached with the certificate thereon, was filed for record in my office on the 22nd day of June, 1896, at 9 o'clock, — minutes, a. m., and that the same is duly recorded in said office in Book 129 for recording trustees' deeds, etc., at page 344.

In witness whereof, I have hereunto set my hand and affixed the seal of said office. Done at Carthage, Missouri, this 27th day of June, 1896.

[SEAL.]

J. A. SIGLER, *Recorder.*

By Mr. EATON: I will introduce the contract between the City of Joplin, State of Missouri, and the Southwestern Electric Light and Water Power Company, of date February 21st, 1894.

Said contract is in words and figures as follows, to wit:

This agreement, made and entered into this 21st day of Feb., in the year eighteen hundred and ninety-four, between the City of Joplin, a municipal corporation of the State of Missouri, party of the first part, and the Southwestern Electric Light and Water Power
77 Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, party of the second part,

Witnesseth: That whereas the party of the first part is desirous of procuring its public streets and buildings to be lighted by electricity, and

Whereas, the party of the second part has an electric plant located and situated in and near the said city of Joplin.

Now therefore, in consideration of the mutual covenants promises and conditions hereinafter mentioned, it is hereby agreed between the parties as follows:

SECTION 1. That this contract and each and every provision thereof shall continue and be in force from the 1st day of May, 1894, to the 1st day of May, 1899, a period of five years, unless it shall sooner be terminated by the provisions hereinafter contained.

SECTION 2. That said second party, its successors or assigns, agree to be, and are bound in the sum of ten thousand dollars ($10,000.00) with good and sufficient security, to furnish said city, the first party, with as many arc lamps to light the streets of said city as the council may desire and by resolution, order from time to time. Said lamps to be of full two thousand (2,000) candle power, kept and maintained at that standard, and lighted at sunset and to continue lighted until sunrise, at all times, at and for the consideration hereinafter mentioned.

SECTION 3. That said second party shall maintain said lamps and keep them in repair, supplying them with carbons, and light and extinguish the same, for which the said party of the first part, the city, shall and hereby agrees to pay the second party at the rate of seventy-two (72) dollars per year for each and every arc light so furnished; to be paid in monthly warrants drawn upon the city treasurer, provided, however, the second party shall receive no pay for any lamp or lamps not lighted and kept burning according to this contract.

SECTION 4. That all of said arc lamps shall be suspended
78 by means of poles and wires over the streets designated, at a height of not less than forty-five (45) feet, erected and maintained at the expense of said second party, and all such poles used shall be sound and large enough for such purposes and properly guyed, and any poles showing signs of weakness or decay shall be at once taken down and replaced by sound, suitable ones by the second party.

SECTION 5. That the city of Joplin shall have the right to order any of the lamps in use on the 1st day of May, 1894, to be changed to some other location, which change or changes shall be immediately made by the second party at its own expense, provided, however, that all such changes of location shall be ordered by the council within ninety (90) days from May 1st, 1894; and provided, further, that if such changes shall necessitate the extension of the line of the second party, or if any additional lights hereafter ordered, during the terms of this contract, shall necessitate such extensions, said second party shall not be compelled to make such changes, or furnish the lights on such extensions, unless the city shall take and pay for at least four (4) arc lights for each and every miles of said

extension, made necessary by such changes or additional lights, or at the same rate for each fraction of mile.

SECTION 6. That the city shall be held blameless of and defended from any destruction of property or damages to persons or property caused by the maintenance, operation and repairing of said company's plant.

SECTION 7. That whenever it may become necessary to remove poles, as in the widening of streets, or any public requirement whatsoever, and the company, being notified thereof, shall at once proceed to make the changes required at its own expense.

SECTION 8. That the party of the first part, by its council, reserves the right to discontinue the use of any light or lamp at any time, that is being used by the city on May 1st, 1894, and shall not
79 be obliged to pay for the same during such disuse, provided, however, that the city shall not have the right to discontinue the use of any arc light or lamp during the term of this contract, the furnishing of which shall have necessitated the extension of the second party's lines.

SECTION 9. The failure by the party of the second part to comply with the foregoing terms and conditions, will work forfeiture of their rights under this contract, and the city shall have the right to demand any loss or damage suffered by it on the bond, and may order the removal of the lamps, poles, wires, and fixtures from the streets of said city, which are used and maintained expressly and only with the street lighting.

In witness whereof, the party of the first part has caused this instrument to be duly signed, sealed and attested by its proper executive and municipal officers, and the party of the second part has caused this agreement to be signed, sealed and attested by its duly authorized executive officers on this the 21st day of Feb., A. D. 1894.

CITY OF JOPLIN, STATE OF MISSOURI,

[SEAL.] By W. B. HALYARD, *Mayor.*

Attest: R. A. SPEARS, *City Clerk.*

SOUTHWESTERN ELECTRIC LIGHT AND WATER POWER COMPANY,

[SEAL.] By E. L. MARTIN, *President.*

Attest: F. B. WILCOX, *Secretary.*

By Mr. EATON: I will introduce certified copy of extract from the minutes of Joplin city council, of date May 9th, 1899, relating to the extension of this contract.

Said instrument is in words and figures as follows, to wit:

Extract from Minutes of Joplin City Council, May 9th, 1899.

The council met pursuant to adjournment with his honor, Mayor J. H. Spencer presiding.

The clerk presented the following:—

80 JOPLIN, Mo., *May 9th*, 1899.

To the hon. mayor and city council.

GENTLEMEN: Your attention is herewith called to the appended communication from the Southwest Missouri Light Company, proposing to continue the service of lighting the city on the present basis for a minimum term of four (4) months. Having duly considered said proposition, your committee respectfully recommends the approval and acceptance thereof, by the city in the form of a contract with said light company to that effect.

Respectfully submitted.

JOHN C. TRIGG.
L. A. FILLMORE.
G. A. WADLEIGH.

Communication appended as follows:

JOPLIN, Mo., *May 3rd*, 1899.

Mr. J. C. Trigg, chairman lighting committee, Joplin, Mo.

DEAR SIR: I have been authorized by a written communication from Mr. Myers, to say that we are willing to continue the service we are giving the city of Joplin on the present basis for a minimum term of four (4) months, as stated in our conversation a few days ago. If it is satisfactory, kindly send us a written order to this effect at your earliest convenience, and oblige,

Yours truly, WEARE PARSONS,
Superintendent.

On motion of Mr. Davis, the above proposition was accepted and the clerk was instructed to so inform the light company.

* * * * * * *

On motion of Mr. Scott, the council adjourned.

Minutes approved May 16th, 1899.

J. H. SPENCER, *Mayor.*

Attest: E. C. H. SQUIRE, *City Clerk.*

* * * * * * *

81 JOPLIN, Mo., *July 23rd*, 1900.

I hereby certify that the above is a true extract from the minutes of the Joplin city council, session of May 9th, 1899, as evidenced by the records of said city, in the possession of the city clerk.

C. W. CALVIN,
Stenographer and Typewriter.

STATE OF MISSOURI, } ss:
County of Jasper, City of Joplin, }

I, E. C. H. Squire, city clerk for the city of Joplin, Mo., do hereby certify that the foregoing is a true copy of a portion of the proceedings of the council of the city of Joplin, Mo., as appears of record on page 63, Record "E," of the journal of the said council.

In witness whereof, I have hereunto set my hand and affixed the seal of the city of Joplin, Mo., this 31st day of July, [SEAL.] 1900.

E. C. H. SQUIRE,
City Clerk of the City of Joplin."

* * * * * * *

By Mr. EATON: I offer a certified transcript of the order of the Jasper county court, authorizing the Southwest Missouri Light Company to erect poles and lines over certain public highways in Jasper county, Missouri.

Said transcript of said order is in words and figures as follows, to wit:

Certified Copy of Order.

Jasper County Court, February Term, 1896.

STATE OF MISSOURI, } *sct:*
County of Jasper, }

Be it remembered that on the 5th day of March, 1896, in said court, the following, among other proceedings, were had, to wit:

Ordered by the court that permission be and hereby is granted
82 to the S. W. Mo. Light Co. of Webb City and Joplin, Mo., their heirs, administrators, and assigns, to erect and maintain electric light poles and wires thereon, over the following-described public road viz: Commencing at the line of the city limits of Webb City, S. E. cor. sec. 14, town. 28, range 33, Jasper county, Mo., thence west along the public road one mile; thence S. along the north gravel road to the limits of the city of Joplin.

Said poles to be placed the usual distance apart and not farther than two (2) feet from the outside line of said road, and in such manner as not to interfere with the working of said road.

In consideration of the above permission the Southwest Mo. Light Co. agrees to assume the responsibility of all accidents or damage that may arise by reason of the permission herein granted.

* * * * * * *

STATE OF MISSOURI, } *ss:*
County of Jasper, }

I, S. A. Stuckey, clerk of the county court in and for said county, hereby certify the within and foregoing to be a true copy of an order made by the said county court on the day and year above written, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in Carthage, this the 12th day of March, 1896.

S. A. STUCKEY, *Clerk.*

By Mr. MONTGOMERY: We object to the last offer for the reason that it is incompetent and irrelevant and tends to prove no issue raised by the pleadings in the case.

By Mr. EATON: We next offer the articles of association and certificate of incorporation of the Merchants' Electric Light and Motor Company, the 2nd of June, 1892, is the date of the articles of association, and the certificate is dated the 27th of June, 1892.

By Mr. MONTGOMERY: We object to that for the same reason as above stated, for the reason that it is irrelevant and incompetent, and tends to prove no issue in this cause raised by the
83 pleadings.

Said articles of association are in words and figures as follows, to wit:—

STATE OF MISSOURI, } ss:
County of Jasper, }

Be it remembered that on the 2nd day of June, A. D. 1892, this agreement, made and entered into by and between J. W. Freeman, J. D. Pierce and O. F. Freeman, of the city of Joplin, Jasper county, Missouri,

Witnesseth: That whereas, the said parties have associated themselves together for the purpose of forming a corporation under and by virtue of the laws of the State of Missouri, and for said purpose do hereby declare and set forth.

1st. The corporate name of this company shall be the Marchants' Electric Light and Motor Company.

2nd. That the city in which said company's property is to be located is the city of Joplin, in Jasper county, and State of Missouri.

3rd. That the amount of the capital stock of said corporation shall be $25,000.00, divided into two thousand, five hundred shares of $10.00 each. That the same has been fully subscribed and twelve thousand five hundred dollars of the fund is invested in the electric light plant in said city, and is fully paid up in lawful money of the United States, and is now in the hands and custody of the persons herein named as the first board of directors.

4th. That the names and places of residence of the stockholders and the number of shares subscribed by each *is* as follows:

J. W. Freeman, Joplin, Mo..... 1900 shares
J. V. Pierce, Joplin, Mo..... 300 shares
O. F. Freeman, Joplin, Mo..... 300 shares

84 5th. That the number of the board of directors shall be three, and the names of the directors agreed upon for the first year are J. W. Freeman, J. V. Pierce and O. F. Freeman.

6th. The number of years this corporation is to exist is fifty.

7th. The purpose for which this corporation is formed is to construct, complete, operate and control the electric light and motor plant in the city of Joplin and mines in the vicinity thereof, and to transact any and all business connected therewith and to buy out and control any and all opposition plants in said city, and the mines adjacent thereto.

In witness whereof, we, the above-named parties have hereunto

signed our names and affixed our seals this 2nd day of June, A. D. 1892.

J. W. FREEMAN. [SEAL.]
J. V. PIERCE. [SEAL.]
O. F. FREEMAN. [SEAL.]

STATE OF MISSOURI, } ss:
County of Jasper, }

Be it remembered that J. W. Freeman, J. V. Pierce and O. F. Freeman, who are personally known to me the undersigned, notary public within and for the county of Jasper and State of Missouri, to be the persons whose names are subscribed to the above and foregoing instrument of writing as parties thereto, this day personally appeared before me and acknowledged that they and each of them executed and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed my official seal at my office in Joplin, the day and year first above mentioned.

WILLIAM CAMPBELL,
Notary Public.

My commission expires on the 18th day of January, 1895.

Said certificate of incorporation is in words and figures as follows, to wit:—

85 No. 6415.

THE STATE OF MISSOURI:

Certificate of Incorporation.

Whereas, an association organized under the name of Merchants' Electric Light and Motor Company, has filed in the office of the secretary of state, articles of association or agreement in writing, as provided by law, and has, in all respects, complied with the requirements of law governing the formation of private corporations for manufacturing and business purposes:

Now, therefore, I, Alexander A. Leseuer, secretary of state of the State of Missouri, in virtue and by authority of law, do hereby certify that said association has, on the date hereof, become a body corporate, duly organized under the name of Merchants' Electric Light & Motor Company, and is entitled to all the rights and privileges granted to manufacturing and business corporations under the laws of this State. And that the amount of the capital stock of said corporation is twenty-five thousand dollars.

In testimony whereof, I hereunto set my hand and affix the great seal of the State of Missouri. Done at the city of Jeffer- [SEAL.] son, this twenty-seventh day of June, A. D. 1892, eighteen hundred and ninety-two.

A. A. LESUEUR,
Secretary of State.

By Mr. EATON: I next offer a certified copy of ordinance No. 441 of the city of Joplin, approved October 7th, 1891.

Said ordinance is in words and figures as follows, to wit:

Ordinance No. 441.

An ordinance granting to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin, doing business under the firm name and style of the Merchants' Electric Light & Motor Company, the right to erect and operate electric light and motor plants, with necessary conduits and appliances for the transmission, distribution, and application of electric light and electric motor power, and regulating the same.

86 Be it ordained by the council of the city of Joplin, as follows:—

SECTION 1. In consideration of the benefit to be derived therefrom, John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin, and their successors and assigns, are hereby granted the right, power, privilege and authority, within the city of Joplin and such additions as may be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity, to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power and for other proper purposes, for the period of twenty (20) years from the granting of this franchise, and for such purposes said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, their successors and assigns, are authorized and vested with full power to erect and maintain on, over and under the streets, avenues, alleys, lanes and public grounds of said city, poles, masts and other proper supports and to carry, suspend and string wires thereon and therefrom, and to lay down, within such streets, avenues, alleys and lanes beneath the surface thereof, such proper pipes, wires or conduits as may be necessary or convenient for the purpose aforesaid, and to maintain and operate, repair and renew the same as may be necessary or convenient, and to occupy the streets, avenues, alleys, and lanes of said city, as the same may be necessary for all the purposes aforesaid.

Provided, that the aforesaid work shall be done, and the rights hereby granted, exercised in such manner as not to interfere with the rights or injure the property of other persons or corporations; and in every case where the surface of the streets, avenues, alleys, lanes or public ground is broken and holes or trenches dug therein, for the purpose aforesaid, they shall be repaired by said

87 parties within twenty-four (24) hours and placed in as good condition as before, and when poles or masts are set through any sidewalks they shall be set next to the curb and a hole of proper size carefully cut through the walk so as not to break the same, and

when set the opening around the same shall be well filled with cement.

And provided that all poles for lines parallel with alleys shall be erected in alleys except where necessary to cross streets, and to properly suspend street lights if contracted for by the city at any time.

SECTION 2. All poles or masts erected within the city limits shall be at least twelve (12) inches in diameter, and thirty (30) feet high from the surface of the ground, except poles carrying street lights which shall be forty-five (45) feet high; and all wires used by the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, their successors or assigns, for the purpose of conveying and transmitting the currents of electricity shall be thoroughly insulated or of such character as is approved by the board of underwriters, and same shall not be placed or located so as to interfere with any telegraph, telephone, street-car, or other electric wires now erected in the city of Joplin.

And when digging in the streets, alleys or other public places for any purpose, shall keep all openings well guarded and keep red lights thereat at night to prevent any injury therefrom. Upon failure of the said parties to use the poles, masts and towers aforesaid, they shall remove the same, and should they fail neglect or refuse to do so, same may be removed by the city of Joplin as any other obstruction at the expense and cost of the said company, their successors or assigns.

SECTION 3. The said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin or their successors and assigns, shall not be allowed to charge for electric arc lights furnished by them more than the following sums per month, viz:

For ten-o'clock circuit, not to exceed the sum of eight (8)
88 dollars per light.

For twelve-o'clock circuit, not to exceed the sum of ten (10) dollars per light;

For all-night circuit, not to exceed the sum of twelve (12) dollars per light.

For incandescent lights of 16 c. p. for ten-o'clock circuit, not to exceed the sum of $0.90, and for all-night circuit not to exceed the sum of $1.00 per light.

For one light erected on the front porch of Freeman's foundry so as to light the Frisco railroad crossing on Main street and to be maintained and kept in order without charge or expense to the city.

SECTION 4. The said Merchants' Electric Light & Motor Co. shall protect, indemnify and save harmless the city of Joplin at all time from expense, cost and damage for injuries sustained by any person or persons, or damage to property during the construction, repair or operation of said electric light and motor plants, or either of them, and if any suit shall be commenced against said city for any injury or damage occasioned by any act or thing done by said Electric Light & Motor Company, their successors or assigns, their agents, servants or employés during the construction, repair or operation of

such electric light and motor plants, then the said Merchants' Electric Light & Motor Co., their successors and assigns, shall at their own expense, join said City of Joplin in defense against such suits, claims and actions as well as pay off and satisfy any judgments that may be obtained against said city in any such proceeding.

SECTION 5. The said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas. Ragin, or their successors or assigns, shall within ten days from and after the date of the passage of this ordinance, file with the city clerk of the city of Joplin their written acceptance of the right- and privileges herein granted, subject to all the conditions herein imposed, and said city clerk shall report the same to the city council.

89 Unless said parties, their successors or assigns shall begin work in good faith within sixty (60) days from the approval of this ordinance, and have work in operation within four (4) months, this ordinance shall be void and of no effect. Provided the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their assigns, do further agree to pay for the publication of this ordinance upon presentation of bill for same; and upon its refusal to pay said bill or cost of publication, then this ordinance shall be deemed null and void, until the above conditions are complied with.

SECTION 6. This ordinance shall take effect and be in force from and after its publication.

Approved October 7, 1891.

R. B. TYLER, *Mayor.*

Attest:

[SEAL.] J. R. KAVANAUGH, *City Clerk.*

I, R. A. Spears, city clerk within and for the city of Joplin, county of Jasper, State of Missouri, do hereby certify that the above is a true and correct copy of ordinance No. 441, of the city of Joplin as recorded in Council Record, year 1891, page 589.

R. A. SPEARS, *City Clerk.*

Joplin, Mo., April 9, 1897.

By Mr. EATON: I next offer a certified copy of the proceedings of the council at which an acceptance was filed and recorded of the provisions of ordinance number 441.

Said certified copy is in words and figures as follows, to wit:

Record of Council Proceedings, City of Joplin, Mo.

Vol. VL, page 607; O. C. T. 20, 1891.

The clerk presented an acceptance of ordinance No. 441, which was as follows:

90 To the honorable the mayor and common council of the city of Joplin:

Whereas, your honorable body on the 6th day of October, 1891, by ordinance No. 441, granted John C. Cox, Jr., H. H. Gregg, J. V.

Pierce, John Wise, J. W. Freeman, and Chas. Ragin under the firm name and style of the Merchants' Electric Light and Motor Co., the right to erect and operate electric light and motor plants within the city of Joplin,

Now, therefore, we hereby accept the rights and privileges granted by said ordinance No. 441, with all the provisions, requirements and conditions therein set forth and published.

Joplin, Mo., Oct. 14, 1891.

THE MERCHANTS' ELECTRIC LIGHT & MOTOR COMPANY.
J. C. COX, JR.,
Per J. W. FREEMAN.
H. H. GREGG.
J. V. PIERCE.
J. F. WISE.
J. W. FREEMAN.
CHAS. RAGIN.

No action taken.

I, E. C. H. Squire, city clerk of the city of Joplin, Mo., do hereby certify that the above is a correct copy of the record of the proceedings of the city of Joplin, Mo., on the date above mentioned pertaining to the acceptance of ordinance No. 441.

In witness whereof, I have hereunto set my hand and affixed the seal of the said city this 27th day of January, 1900.

[SEAL.] E. C. H. SQUIRE, *City Clerk.*

By Mr. EATON: I next offer the agreement between the Merchants' Electric Light & Motor Company of Joplin, Mo., and the Southwest Missouri Light Company, dated May 23rd, 1896.

By Mr. MONTGOMERY: I object to this offer because it is not the best evidence of the sale.

91 By Mr. EATON: You don't object then to it because it is not signed by J. W. Freeman and A. E. Stilwell in behalf of these two companies, do you?

By Mr. MONTGOMERY: I do not question the signatures to the instrument; I object to it because it is a preliminary agreement, it is only the preliminary agreement of a sale and is not proof of the sale itself.

Said agreement is in words and figures as follows, to wit:

This agreement, made and entered into this 23rd day of May, A. D. 1896, by and between the Merchants' Electric Light & Motor Co., a corporation, of Jasper county, Missouri, party of the first part, and the Southwest Missouri Light Company, a corporation, of Jackson county, Missouri, party of the second part, witnesseth:

That, whereas, the party of the first part is the owner of and is operating an electric light and power plant in Joplin, Jasper county, Missouri, and the party of the second part is also the owner of and operating electrical plants in Jasper and Newton counties, Missouri;

And whereas, the party of the first part is desirous of selling all of their plant, except building, engine, boiler and ground, occupied

by same; fifteen poles and wires running from plant to Freeman's residence, and tenant houses; one hundred K. W. dynamo in car, electric light appliances, machinery, business, franchise and good will to the party of the second part, and the party of the second part is desirous of purchasing the same;

Now, therefore, it is hereby agreed by and between the parties hereto, that the party of the first part, does hereby grant, bargain, sell, convey and confirm unto the party of the second part, his successors and assigns, all of the electrical plant, machinery, appliances, franchise, business and good will except as above specified, now owned by the party of the first part, and operated by it, in connection with furnishing electric lights, both arc and incandescent to the citizens of and in Joplin, Missouri; intending to convey
92 by proper conveyances and instruments in writing, and agreeing hereby to do so, all of the properties of the party of the first part connected with the said electric light and power plant, more particularly described as follows:

1 old pole line; 1 new pole line, 2 belts; 2 automatic circuit-breaker-; sockets, fuse blocks, posettes etc., in use on line; 42 lightning-arresters; 19 meters; 29 fan motors, of which 3 are sold to date; 22 economy coils (1, 2 & 3 lighters); 31 incandescent transformers; (new style 20 to 200 lights); 55 al*ertant*ing arc lamps, 2000 c. p.; 25 old-style transformers, 1000 to 50 volts; 75 K. W. generator, (new style); 25 K. W. generator, (old style); 35 arc-light machine-; 25 series arc lamps, 2000 c. p.

All other supplies, tools, fixtures and other new and old material used in connection with the electric lighting business;

1203 incandescent lights in service;

52 arc lights in service.

Franchise and rights of way now belonging to the party of the first part and under which it is operating;

All contracts with the party of the first part for lighting, together with all the books, documents, and other papers connected with the said electric light business, and the good will and business of the party of the first part, in the electric light business at and for the sum of fifteen thousand dollars ($15,000) to be paid as hereinafter stated; three thousand dollars ($3000) to be paid in cash, upon the transfer of the above-described property, and the possession thereof to the party of the second part, and the balance of said consideration to be paid as soon as the party of the first part shall transfer the above property in legal and proper manner to the party of the second part in twelve (12) of the Southwest Missouri Light Company's first-mortgage six per cent. bonds of the denomination of one thousand dollars ($1000) each with interest from May 1st, 1896; the party of the first part agreeing to turn over all of the said property except as before specified, on the first day of June, A. D. 1896,
93 with all incomes that may be derived therefrom after said date; it being understood and agreed that should the first party have collected any moneys for the use of incandescent or arc lamps or power for service, subsequent to May 31st, 1896, that what-

ever shall have been so received shall be turned over to the party of the second part.

It is further understood and agreed that upon the signing of this contract, the party of the first part shall furnish the second party the certificate of some reputable abstractor of Jasper county, Missouri, to the effect that there are no mortgages judgments, taxes or other liens of whatsoever kind or nature that may be unpaid or outstanding against any of the property conveyed to the second party, and that the party of the first part shall, if so requested by the officers or agents of the party of the second part, surrender to the party of the second part bills, properly receipted, showing that all of the machinery, material, appliances, tools, etc., to be conveyed to the second party are paid for in full.

And as a further consideration for the payment of the purchase price above mentioned, the party of the first part shall cause to be properly transferred and assigned to the party of the second part all of the capital stock of the Merchants' Electric Light & Motor Company, with all of the books and documents pertaining to the said company, and shall cause to be elected in lieu of the present officers and directors of the said last-mentioned company, such persons as officers and directors thereof as shall be designated by the party of the second part within a reasonable length of time after party of the second part assumes the business of the party of the first part.

And as a further inducement to the party of the second part, to purchase said plant at said price and sum, the said party of the first part, and all the stockholders of the Merchants' Electric Light & Motor Company do hereby agree that neither they, nor any person or corporation in which, or with whom, they may be interested or connected in the electric light and power business, shall engage in the electric light and power business in the counties of Newton and Jasper for the period of ten years from and next after June 1st, 1896, neither shall said first party allow any facilities or furnish any power or machinery to any person or persons for conducting an electric light business, or allow any of the mach9inery now used by either of them to be sold or used in Newton or Jasper counties for said business; the party of the first part further agreeing that until the party of the second part shall desire to conduct its lines and service and remove from the buildings of the first party the property herein conveyed, the second party shall have the right to use the same, if not sooner removed, until July 10th, 1896, at which time party of the second part is to remove all property thereon, from the premises of party of the first part; and the party of the first part, on or before the 1st day of June, agrees to convey by proper conveyance, all of the property hereinabove described, and such conveyance shall not in *in* anywise affect the continuance or validity of this contract, except so far as the same shall be executed by such conveyance.

94

And the party of the second part hereby agrees to cause to be paid to the first party the consideration at the times hereinabove mentioned.

In witness whereof, the parties hereto have caused this agreement to be executed in duplicate on this 23rd day of May, 1896.

MERCHANTS' ELECTRIC LIGHT & MOTOR COMPANY,
By J. W. FREEMAN, *President.*
SOUTHWEST MISSOURI LIGHT COMPANY,
By A. E. STILWELL, *President.*

* * * * * * *

The undersigned, the Missouri, Kansas & Texas Trust Company, being interested in the Southwest Missouri Light Company, and as an inducement to the party of the first part to enter into the
95 above and foregoing contract, hereby agrees to furnish a purchaser for six of the bonds hereinabove described, within three years from June 1st, 1896, and failing to do so, to buy the said bonds at and for the sum of one thousand dollars, for each bond; and further agrees to find a purchaser within five years from June 1st, 1896, for the remainder of said bonds, to wit:—six bonds, and failing to do so, to buy said bonds at and for the sum of one thousand dollars for each bond; in the meantime guaranteeing unto the said Merchants' Electric Light & Motor Company its assigns, or the holders of said bonds, that the interest on said first-mortgage bonds shall be promptly paid upon the surrender, however, to the said Missouri, Kansas & Texas Trust Company, of the interest coupons as they become due. The option being given to the Missouri, Kansas & Texas Trust Company to purchase the said bonds on or before the dates above specified, at the price herein mentioned, and in the event that the said Merchants' Electric Light & Motor Company, or trustee, or its assigns, should have an offer for said bonds before said date, then they shall give the Missouri, Kansas & Texas Trust Company the option to purchase said bonds at the price for and at which they are willing to sell the same.

In witness whereof, the said Missouri, Kansas & Texas Trust Company has caused this certificate to be signed by its president, and the parties hereinabove mentioned as the party of the first part, have caused this instrument to be executed by their proper signatures.

MISSOURI, KANSAS & TEXAS TRUST COMPANY,
By A. E. STILWELL, *President.*
MERCHANTS' ELECTRIC LIGHT & MOTOR COMPANY,
By J. W. FREEMAN, *President.*

JOPLIN, MO., *June* 9, 1896.

Received the full consideration mentioned in the above and foregoing contract.

MERCHANTS' ELECTRIC LIGHT
96 & MOTOR CO.,
By J. W. FREEMAN, *President.*

* * * * * * *

In addition to the foregoing agreement, and as a further inducement to the party of the first part to enter into the above and foregoing contract, it is hereby understood between the party of the first part, and the Missouri, Kansas & Texas Trust Company, that at any time after June 1st, 1896, when requested to do so by the party of the first part, the Missouri, Kansas & Texas Trust Company hereby agrees to advance to the party of the first part, eighty per cent. of the par value of twelve bonds, (12000.00) held by the party of the first part, in cash, amounting to nine thousand six hundred (9,600.00) dollars, same to be a four months' loan without liability, to be renewed at period of four months thereafter until said bonds are sold. The conditions of the foregoing agreement are as follows:

As collateral security for loan of nine thousand and six hundred (9,600) dollars, made by the Missouri, Kansas & Texas Trust Company to the party of the first part, the latter will deposit all of the twelve bonds, heretofore referred to, and all of the interest designated by coupons shall be assigned to the Missouri, Kansas & Texas Trust Company, as interest for the money advanced by said Missouri, Kansas & Texas Trust Company, and it is further understood that when said bonds are sold or disposed of, the Missouri, Kansas & Texas Trust Company will pay the party of the first part what remains of said bonds up to ninety-eight per cent. of their par value; that is, eighteen per cent. in addition to eighty per cent. advanced as a loan, charging as a commission for making this sale a fee of five per cent. of the par value of said bonds.

In witness whereof, the Missouri, Kansas & Texas Trust Company has caused this certificate to be signed by its president the same to constitute part of the agreement of May 29th, 1896, between the Merchants' Electric Light and Motor Company, by J. W.
97 Freeman, its president, party of the first part, and the Southwest Missouri Light Company by A. E. Stilwell, its president, party of the second part.

* * * * * * *

By Mr. EATON: I next offer the deed of conveyance from this Merchants' Electric Light & Motor Company, a corporation of Jasper county, Missouri, to the complainant, The Southwest Missouri Light Company, of date of June 9th, 1896.

Said deed of conveyance is in words and figures as follows, to wit:

Know all men by these presents, that the Merchants' Electric Light & Motor Company, a corporation of Jasper county, Missouri, for and in consideration of the sum of fifteen thousand dollars ($15,000) to them in hand paid by the Southwest Missouri Light Company, a corporation of the county of Jackson, and State of Missouri, the receipt of which is hereby acknowledged, by these presents do bargain and sell unto the said Southwest Missouri Light Company all the following-described goods and chattels, now remaining and being in the county of Jasper and State of Missouri, to wit:

1 pole line; 1 new pole line; 2 belts; 2 automatic circuit-breaker-; sockets, fuse blocks, rosettes, etc., in use on line; 42 lightning-arresters; 19 meters; 29 fan motors, of which 3 are sold to date; 22

economy coils (1, 2 and 3 lighters); 31 incandescent transformers, 1000 to 50 volts; 75 K. W. generators, (new style); 25 K. W. generators, (old style); 35 arc-light machines; 25 series arc lamps, 2000 c. p.;

All other supplies, tools, fixtures, and other new and old material used in connection with the electric lighting business as conducted by the said grantors within the city of Joplin, in the county of Jasper, State of Missouri.

1203 incandescent lights in service;

52 arc lights in service;

All franchises and rights of way now belonging to the
98 parties of the first part, and under which they are operating and conducting the said business of electric lighting and furnishing power.

All contracts with the grantors, for lighting, together with all the books, documents and other papers connected with the said electric lighting business in the said city of Joplin, together with the good will and business of the said grantors, except real estate and buildings,—new 100 K. W. in car boiler and *and* engine.

To have and to hold, the same unto the said Southwest Missouri Light Company, its successors and assigns forever; and that the said Merchants' Electric & Motor Company, grantors herein, will warrant and defend the title to the said goods and chattels hereby sold unto the said Southwest Missouri Light Company and unto its successors and assigns forever, against the lawful claims and demands of all persons, whomsoever.

In witness whereof, the said Merchants' Electric Light & Motor Company has caused this instrument to be properly executed by its duly authorized officers, this 9th day of June, A. D. 1896.

[SEAL.] MERCHANTS' ELECTRIC LIGHT & MOTOR COMPANY,
By J. W. FREEMAN, *President.*

* * * * * * *

STATE OF MISSOURI, }
County of Jasper. }

On this 9th day of June, A. D. 1896, before me personally appeared J. W. Freeman, president of the Merchants' Electric Light & Motor Co., to me personally known, who being by me duly sworn, did say that he is the president of the Merchants' Electric Light & Motor Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation, by authority of its board of directors, and the said J. W. Freeman acknowledged said instrument to be the free act and deed of said corporation.

99 In testimony whereof, I have hereunto set my [SEAL.] hand and affixed my notarial seal the day and year last above written.

CLARK CRAYCROFT,
Notary Public, Jasper County, Missouri.

My term expires Jan. 31, 1899.

Certificate of Record.

In the recorder's office.

STATE OF MISSOURI, } ss:
County of Jasper, }

I, J. A. Sigler, recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached with the certificate thereon, was filed for record in my office on the 10th day of June, 1896, at 9 o'clock 2 minutes a. m., and that the same is duly recorded in said office in Book 22, for recording, at page 468.

In witness whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said office. Done at Carthage, Missouri, this 11th day of June, 1896.

J. A. SIGLER, *Recorder,*
By ED. BAILEY, *Deputy.*

Q. Where do you reside, Mr. Myers?
A. Kansas City, Missouri.
Q. What is your occupation or business?
A. I am interested—operating gas and water plants and electric light plants.
Q. Did you ever have anything to do or were you connected with The Southwest Missouri Light Company, the complainant?
A. Yes sir.
Q. When did you become connected with that company?
A. My first connection with them was about, as near as I can remember now, nine or ten years ago.
Q. Well, I mean the corporation, this corporation, the complainant that acquired these properties in Joplin?
A. The Southwest Missouri Light Company,—I was with them when they incorporated, I was one of the incorporators.
100 Q. What official position did you hold in that company, and for how long did it continue, when did it begin, and for how long did it continue?
A. It continued from the time of the organization, I was general manager of the company from the time of its organization until about November, 1899.
Q. That would be November of 1898?
A. Of 1899.
Q. 1899?
A. 1899, yes sir.
Q. How often were you as general manager, at Joplin in connec-

tion with the operation and running of the plant of the complainant?

A. I was generally down there once each month, with the exception of the construction period,—during the construction period I was there about every week.

Q. Did you, as general manager, have the supervision of its business and affairs?

A. Yes sir.

Q. Were you familiar with its property?

A. Yes sir.

Q. You are still connected with the company, are you not, or interested in the company?

A. Yes sir.

Q. Where is the machinery or power plant of the company located with reference to the city of Joplin?

A. The power machinery is located at what is called Grand Falls in Newton county.

Q. How far, and in what direction from the city of Joplin?

A. It is about four and three-quarter miles—I think it is about southwest as near as I can remember.

Q. Did the company have property consisting of lines and poles and other lighting apparatus in the city of Joplin?

A. Yes sir.

Q. How was the lighting appliances and property in the city of Joplin connected with the power plant at Grand Falls?

A. By a system of lines leading from the substation at Joplin to the power station at Grand Falls.

Q. Those lines are lines of wire on poles are they not?

A. Yes sir.

Q. Did the property of the company extend beyond the city of Joplin to other cities?

A. Yes sir.

Q. To what other cities?

101 A. To Webb City and Carterville.

Q. How was that connection made, by poles and wires strung on the poles?

A. Yes sir.

Q. Did the company have any property or appliances for furnishing light in the two last-named cities of Webb City and Carterville?

A. Yes sir.

Q. Did you at any time cause to be taken a complete inventory and description of the property of the complainant company to which you have just referred?

A. Yes sir.

Q. (Handing witness what purports to be inventory.) You may state whether that is the inventory made at that time?

By Mr. MONTGOMERY: I object to the last question because it is irrelevant and immaterial, and does not tend to establish any issue raised by the pleadings, and because it does not call for any original evidence, but for the purpose of introducing some paper which is not evidence.

A. This is the inventory that I had prepared.

Q. I would like to have you explain the notations or figures upon that paper, if you know; state if you know who made them?

By Mr. MONTGOMERY: I object to any testimony of this paper for the reason that the witness states he had it prepared and did not prepare it himself, consequently it cannot be an original memorandum made by himself for the purpose of refreshing his memory.

A. The figures opposite the valuations I placed on there myself, opposite the list of properties.

Q. The description of the properties contained on that inventory are in typewriting, are they not?

A. Yes sir.

Q. You caused that to be prepared and afterwards placed the figures thereon yourself?

A. Yes sir.

By Mr. MONTGOMERY: I object to the question because it is leading and suggestive, and because it tends to establish no issue raised by the pleadings in this case.

Q. What part did you take yourself in preparing that paper?

102 A. I placed the valuations opposite the property.

By Mr. MONTGOMERY: I object to this testimony because it tends to prove no issue in this case.

Q. What did you do with reference to having the descriptions that are contained in that paper prepared prior to your entering the figures thereon?

By Mr. MONTGOMERY: I object to that because it is irrelevant and immaterial and tends to prove no issue raised by the pleadings in this case.

A. I had a complete inventory of the property made so that I could place a value on the same which I did in my own figures.

Q. Is there a recapitulation of that inventory next to it there in pencil?

A. Yes sir.

Q. In whose handwriting is the recapitulation?

A. That is in the handwriting of Mr. Dunsmore, a clerk at that time in the employ of the company.

Q. Is that a correct inventory of the property of the complainant company at the time it was made, as shown by its date?

By Mr. MONTGOMERY: I object to this evidence because it is irrelevant and immaterial and tends to prove no issue in the cause, and because it is not a paper prepared by the witness, and is not original evidence.

A. Yes sir, this was a correct inventory at that time.

Q. Where is Mr. Dunsmore now?

A. He was in New York the last I heard of him.

Q. Is he in the employ of the company now in any way?

A. No sir.

By Mr. EATON:

Q. We offer this invoice and recapitulation of date of March 20th, 1897.

By Mr. MONTGOMERY: I object to that inventory because it is irrelevant and immaterial and tends to prove no issue raised by the pleadings, and because it is simply a paper written by somebody else, and not the best evidence of any record or book which is admissible in evidence.

Q. This is the original inventory, is it not, Mr. Meyers?

103 A. Yes sir.

Said inventory is in words and figures, as follows, to wit:

Real estate, Grand Falls.

That part of the N. W. ¼, N. E. ¼, 28–27–33, lying south of Shoal street.

10 acres off the east side of N. E. ¼, S. W. ¼, 28–27–33.

Also part of the N. W. ¼, S. E. ¼, 28–27–33, as follows:—Beginning at a flint stone, it being the N. W. corner of said N. W. ¼, S. E. ¼; then east 10 rods to a limestone; then south 23° 15′ east, 44 rods and 22 links to a limestone; then west 3 rods to a limestone; then south 21 15′ east, 9 rods and 14½ links to a limestone; then south 58 west, 32 rods and 19 links to a flint stone on the ¼-section line, dividing said S. W. ¼ section 28 from the S. E. ¼, said section; then north on said section ¼ line 67 rods 1 link to beginning, containing eight (8) acres.

Beginning at the S. W. corner of the W. ½, S. W. ¼, 28–27–33; thence east on the south line of said ¼, ¼, section 165 feet; then northeasterly in a straight line to point 300 feet south and 200 feet east of the N. W. corner of said ¼, ¼ section; then northeasterly in a straight line to a point on the north line of said W. ½ of said ¼, ¼ section 125 feet north of the N. E. corner of said W. ½; then west on said north line to the N. W. corner of said ¼, ¼ section; then south on the west line thereof to beginning.

Containing seven (7) acres.

Total estimated value, $11,000.

Real estate, Joplin.

Lot # 176, Murphy's addition to Joplin, $1,000.

Real estate, Webb City.

Lots 100, 101, 102, 103 & 104, Cottage Hill addition to Webb City. $1500. Including buildings.

Buildings and dam, Grand Falls.

1 stone dam across Shoal creek, $35,000.

1 stone building, 35–50 ft. with 12-ft. story, tar roof, $1000.

104 1 iron-clad building 35–50 ft. 12-ft. story, tar roof, $500.

1 frame belt house, 25–60 ft. 10-ft. story, } $500.
2 3-room frame cottages, }

Buildings, Joplin.

1 brick building, 50–50 ft. divided into three rooms each 16 ft. wide, $1,000. 12-ft. ceilings, tar and gravel roof.
1 substation and stable 30–40 ft. frame with wareroom adjoining, $500. 14–20 ft.

Buildings, Webb City.

See Webb City lots.

Office & operating equipment, Joplin.

1 48-in. roll-top desk, $30.
1 letter-press stand, $5.
1 flat-topped table, $7.
1 stove, 5.
4 chairs, 4.
3 horses, $75 each, 225.
1 set double harness, $30.
1 set single harness, $15.
1 combination wagon, $75. (521.)
1 trimmers' cart, $50.

Office & operating equipment, Webb City.

1 48-in. roll-top desk, $25.
1 12-in. letter press, $8. 98.
1 set single harness, $15.
1 trimmers' cart, $50.

Water power, Grand Falls.

2 66-in. vertical turbine wheels set in 10-ft. penstocks. with necessary gears shafting and 84–28-in. belt wheels, with Woodward governor, $2000.

Steam-power machinery, Grand Falls.

2 54 in. by 16 ft. tubular boilers with 48–4-in. flues, and full arch front complete, $1200.
1 boiler feed-pump, Smith Vale duplex pattern. Size 4½, 105 $25. 3–4.
1 standard high-pressure feed-water heater, $50.
Compound Rice automatic engine, cylinders 11–22–20. $1200.

Webb City.

2 66 in. 16 ft. tubular boilers containing 72 3½-in. flues with full arch front, and stack complete. $500 each.
1 boiler feed-pump, Dean duplex pattern. Size 6–4–6. $25.
1 No. 8 Stilwell Bierce open-feed water heater. $50.
1 single-cylinder Rice automatic engine, size 16–16. $700.

Transmitting machinery, Grand Falls.

29 ft. 4 15–16 line shafting; 1 24-in. double belt 145 ft.
27 ft. 5 in. " " 1 26-in. " " 139 ft.
10 flood stands & rearings; 1 20-in. " " 41 ft.
1 clutch-pulley 48–24 in. 2 14-in. " " 47 ft.
2 clutch-pulleys 48–28 in. 2 12-in. " " 44 ft.
1 clutch-pulley, 66–15 in. 2 3-in. exciter belts, 21 ft.
1 clutch-pulley, 54–12 in. 1 32-in. double belt, 49 ft. } $3000.00.
1 wood split pulley, 63–36 in. 1 3-in water-wheel belt, 19 ft.
1 iron split pulley, 26–5 in.
1 54-in. clutch-coupling for 5-in. shaft.
1 8-ft. length 1½-in. shafting with bearing for water-wheel governor.

Electrical machinery, Grand Falls.

1 Stanley generator, (Alt) 5000 volts 240 K. W. capacity, with 2 exciters and switch-board equipment complete, $6000.
1 brush arc machine of 100–2000 c. p. arc-light capacity, $1500.
3 T. H. arc machines of 50–2000 c. p. arc-light capacity, each, $500 each.

Joplin.

5 substation transformers, 5000 to 2000 volts, 45 K. W. each.
2 high-tension main-line Stanley switches. } $3000.00.
1 16 circuit brush arc switch-board.

106 Idle machinery.

(This is reported in old machinery and salvage.)

1 2-phase W. H. alternator 2000 volts 75 K. W. with exciter and complete switch-board equipment.
1 25 K. W. W. H. alternator 1000 volts with exciter and switch-board instruments. } $2000.00.
1 35 light wood arc machine, 2000 c. p.

Arc lamps.

10 double T. H. 41 $15 each, 150.00.
41 single T. H. $12 each, 492.00.
124 single Western Electric $17 each, $2108.00.
25 single standard, $10 each, 250.00.
49 alternating $15 each, 735.

Webb City.

5 substation transformers, 5000 to 1000 volts 15 K. W. each,
1 high-tension Stanley switch, } $2000.00.
1 2 circuit Western Electric arc switch-board.

Pole line from Grand Falls to Joplin.

No.	Size.		
293	30 ft. $4	each	1172.00
3	35 ft. $5	"	15.00
2	40 ft. $7	"	14.00
37	45 ft. $8	"	296.00
6	50 ft. $10	"	60.00
2	60 ft. $15	"	30.00
1	65 ft. $17	"	17.00
1	75 ft. $20	"	20.00
1	80 ft. $25	"	25.00
			1649

1198 4-pin cross-arms, 30c. each, 359.40.
4792 oak pins, $10 per 1000, 47.92
944 porcelain insulators, high tension, 35c. each, 430.40
3048 glass insulators, heavy, $15.00 per 1000, 45.96
53172 ft. # 00 copper w. p. wire, 4430.80 $440 per mile.
53172 ft # 0 copper w. p. wire, 3776.25 $375 per mile.
107 159516 ft. # 6 copper w. p. wire 3021.00 $100 per mile.
26586 ft. gal. iron ground wire, 100.60 $20 per mile.

Telephone construction from Grand Falls to Joplin.

832 upright extensions, 2–4–64 in. 30c. each	249.60
832 pony glass insulators, $7 per 1000	5.82
53172 ft. E. B. B. telephone wire $20 per mile	201.40
2 long-distance telephone instruments, $15 each	30.00
1 extension Bell with 12-point switch, $10	10.00
	$476.82

Pole line from Joplin to Webb City.

No.	Size.	
341	30 ft. $4	each 1364.00
10	35 ft. $5	each 50.00
7	45 ft. $8	each 56.00
782	5 ft. 4-pin cross-arms 30c.	each 234.60
3128	oak pins, $10 per 1000	31.28
1564	547.40 porc. high-tension insulators 35c. each	
782	23.46 heavy glass insulators, triple $30 per 1000.	
144804 ft. # 6 hard drawn copper wire $100 per mile		2742.00
72402 ft. # w. p. wire $100 per mile		1371.00
36201 # 8 E. B. B. iron ground wire, $20 per mile		137.00

Telephone construction from Joplin to Webb City.

874 upright extension 2–4–64 in. 30c. each	262.20
874 pony glass insulators, $7 per 1000	6.11
72402 ft. # 12 E. B. B. telephone wire, $12 per mile	164.52
2 long-distance telephone instruments, $15.00 each	30.00
1 extension Bell with 12-point switch, $100	10.00
	$472.83

Pole line, Joplin.

No.	Size.	
10	20 ft. $2 each	20.00
183	25 ft. $2.50 each	457.50
187	30 ft. $4 each	748.00
148	35 ft. $5 each	740.00
108		
3	40 ft. $7 each	21.00
12	45 ft. $8 each	96.00
100	50 ft. $10 each	10.00
1286	4-pin cross-arms 30c. each	385.80
5144	oak pins, $10 per 1000	51.44
5144	heavy glass insulators, $15 per 1000	77.16

1551.00	arc circuit street	81900 ft. # 6 w. p. wire,	$100 mile.
452	com.	23900 ft. # 6 w. p. wire,	100 mile.
866.00	inc. circuit	45760 ft. # 6 w. p. wire,	100 mile.
242.40		16020 ft. # 8 w. p. wire,	80 mile.
263.20		19900 ft. # 10 w. p. wire,	70 mile.
289.80		25540 ft. # 12 w. p. wire,	60 mile.
85.00		9000 ft. # 14 w. p. wire,	50 mile.
16.40		2200 ft. # 0 w. p. wire,	40 mile.

1375.00 55 arc street light hangers and cables, $25 each.

5140.80 inc. wiring and fixtures in buildings 1950 lights, estimated $2,000.

Transformers, Joplin.

Kind.		Watts.		Total.	
5	brush	1500	$20 each	7500	100
3	Stanley	500	$10 each	1500	30
2	"	750	$12 each	1500	24
4	"	1000	$15 each	4000	60
1	"	2000	$25 each	2000	25
1	"	3700	$50 each	3700	50
1	T. H.	250	$7 each	250	7
1	"	300	$8 each	300	8
2	"	500	$10 each	1000	20
1	"	750	$12 each	750	12
10	"	1000	$15 each	10000	150
1	"	1000	$15 each	1000	15
3	"	1250	$18 each	3750	54
1	"	1500	$20 each	1500	20
9	"	2500	$30 each	22500	270

109	Kind.	Watts.			Total.	
2	T. H.	7500	$90	each	15000	180
1	Wagner	2000	$25	"	2000	25
1	"	5000	$65	"	5000	65
1	W. H	5000	$65	"	5000	65
2	"	7500	$90	"	15000	180
1	"	10000	$120	"	10000	120
1	"	4000	$45	"	4000	45
2	"	3000	$40	"	6000	80
3	"	2000	$25	"	6000	75
4	"	1500	$20	"	6000	80
12	"	1000	$12	"	12000	180
2	"	2500	$30	"	5000	60

Transformers, Webb City & Carterville.

	Kind.	Watts.			Total.	
20	Stanley	500	$10	each	10000	200
11	"	1500	$20	each	16500	220
1	"	1000	$15	each	1000	15
3	"	3750	$50	each	11250	150
2	"	5000	$65	each	10000	150
2	Wood	2500	$30	each	5000	60
1	"	2000	$25	each	2000	25
						800

Pole line, Webb City & Carterville.

No.	Size.		
7	20 ft. $2.00 each	14.00	
235	25 ft. $2.50 each	587.50	
112	30 ft., $4.00 each	448.00	
8	35 ft. $5. each	40.00	
6	40 ft. $7. each	42.00	
23	45 ft. $8. each	184.00	
782	4-pin cross-arms, 30c. each	234.60	
3128	oak pins, $10 per 1000	31.28	
3128	heavy glass insulators, $15 per 1000	46.92	
			1628.30

110

Arc circuit, street, 947.00 50050 ft. # 6 w. p. wire 100 mile.
com. 62.00 3275 ft. # 6 w. p. wire 100 mile.
Inc. circuit, 106.00 5600 ft. # 6 w. p. wire 100 mile.
561.60 37100 ft. # 8 w. p. wire 80 mile.
73.50 5550 ft. # 10 w. p. wire 70 mile.
41 arc street light hangers and cables, $25 each.
Inc. wiring and fixtures in building, 550 lights (estimated)

Meters in stock.

1—10-light 50-volt Watt meter	$10	
1—15-light 50 " " "	12	
1—25-light 50 " " "	15	
1—50-light 50 " " "	30	
1—100-light 50 " " "	60	
1—10 Amp. meter	15	
1—20 Amp. meter	18	
1—30 Amp. meter	27	
		187

1—10 Amp. meter, Will Moore, 220 E. 4th St., $15.
1—10 " " C. H. Rohrer, # 906 Wall, $15.
1—10 " " Fred Ba Som, 4th & Seargeant, $15.
1—10 " " M. Byler, Sapp bldg., $15.
1—20 " " E. O. Bartlett, 511 Wall, $18.
1—20 " " J. B. Cotton, 419 Joplin, $18.
1—20 " " Famous, 407 Main, $18.
1—20 " " Frick Bros. & Co., 302 Main, $18.
1—20 " " J. W. Ogden, 211 Main, $18.
1—40 " " Club theatre, 4 & Joplin, $25.
1—40 " " Famous, 407 Main, $25.
1—40 " " Model Clothing Co., 404 Main, $25.
1—40 " " M. Weiler, 424 Main, $25.
1—25-light 50-volt Watt meter, Henry Weyman, 508 Sargeant, $15.
1—25 " 50-volt Watt meter, Ed. Zelliken, 4 & Sargeant, $30.
1—50 " 50-volt Watt meter, Model Clothing Co., 404 Main, $30.

111 Fan motors.

22 12-in. alternating fan motors, $5 each.
1 Weston portable volt meter, # 1007, $75.00. (512.)

Freeman's meters turned over May 1st, 1896.

Farmers.	Golden Eagle lodge.	W. B. McCracken. (X)
Wm. M. Carter.	The Cyclone. (X)	Alfred Reynolds. (X)
Club theatre.	J. B. Cotton.	Church Bros. (X)
Dunwoody mill.	Peter Burress.	Will Moore.
Paul Marquis.	W. S. Harmony.	Frank Meyers & Co.
Mrs. Weimer.	Dunwoody, J. F. (residence).	E. O. Bartlett.
Model.		Glover Book & P. Co. (X)
Globe Ptg. Co. (X)	L. A. Fillmore.	Mrs. M. Heavern.

Said recapitulation is in words and figures as follows, to wit:—

Inventory.

Southwest Missouri Light Co., March 20th, 1897.

Real estate:

Grand Falls	11,000	
Joplin	1,000	
Webb City	1,500	
		13,500

Buildings and dam:		
Dam Grand Falls	35,000	
Power-house, "	1,000	
Other bldgs., "	1,000	
Joplin	1,500	
		38,500
Office & operating equipment:		
Joplin	521	
Webb City	98	
		619
Steam machinery:		
Grand Falls	2,475	
Webb City	1,775	
		4,250
Water-power machinery:		
Grand Falls	2,000	2,000
112 Transmitting machinery:		
Grand Falls	3,000	3,000
Electrical machinery:		
Grand Falls	9,000	
Joplin	3,000	
	2,000	
Webb City (O. M. S.)	5,000	
		19,000
Arc lamps:		
Joplin		
Webb City & Carterville	3,735	
		3,735
Pole lines:		
Grand Falls to Joplin	1,425,815	
Joplin to Webb City	702,957	
Pole inc. arc circuits:		
City Joplin proper	873,770	
City Joplin transformers and wiring	4,000	
City W. C. transformers and wiring	440,340	
City of Webb City transformers and wiring	1,400	
		3,982,882
	3,982,882	
Electric meters		512
Electric motors		110
		12,515,482

Q. Now, what property, improvements or additions were added to the plant of the complainant as described in the inventory after that time, that is, after the date of the inventory?

By Mr. MONTGOMERY: I don't know what that date was.
By Mr. EATON: I gave it here, it was March 20th, 1897.
By Mr. MONTGOMERY: I object to that because it don't limit the proof to any additions made under the franchise granted in this case, and does not limit the proof to improvements made within the city of Joplin.

113 A. The company, the Southwest Missouri Light Company, started in to put in improvements right from the start as far as we could get the machinery, and the plant and lines were very largely increased; the plant at this time was about three times as great as it was then,——

By Mr. MONTGOMERY: *I object to the answer to the question be-*cause——
By Mr. EATON: Wait until he gets through before you object.
By the WITNESS: I guess that's about all of the answer.
By Mr. MONTGOMERY: I object to the answer because the testimony is not limited to improvements made either in the city of Joplin or its suburbs or additions.

Q. Mr. Myers, you may state in detail what improvements and additions were made, that is, after this inventory of March 20th, 1897?

By Mr. MONTGOMERY: I object to that question unless it is limited to improvements made within the corporate limits of Joplin or in the suburbs or additions to said city.

A. The water wheels that were in use were displaced by new and modern wheels, and the capacity of the wheels increased from five-hundred-horse power to a thousand-horse power; in addition to that there was a steam plant put in consisting of two five-hundred-horse power Corliss boilers, and placed in connection with all the shafting and buildings at the falls.
Q. Did you build any additional buildings?
A. Yes sir, we built two very large buildings.
Q. How were they constructed, of what kind of material?
A. They were constructed of brick with cement floors, and in addition to that, why we put up a large mileage of wire, I should judge at this time the additional wire put up in Joplin and leading from Joplin to the falls would aggregate twenty-five to thirty miles of new wire, and we also constructed at Joplin a new substation built of brick, and increased the substations by putting in additional capacity in the way of step-down transformers.

114 Q. Where was this substation located with reference to the power plant at the falls and the city of Joplin?
A. The substation was located on the company's property in the city of Joplin. I think it is located in Murphy's addition.
Q. The property described in this inventory?
A. Yes sir.
Q. What did that consist of, what kind of a building, what was put into the building?
A. It is a brick building, a square brick building put up for the

purpose of enlarging our substation, and also to have a fire-proof building, or practically a fire-proof building.

Q. What is the use of a substation?

A. That is where all the wires terminate in Joplin leading from the power plant at Grand Falls for the purpose of distributing light through the different portions of the city, and for the purpose of having step-down transformers which are used for the purpose of stepping down the voltage from five thousand, as the case may be, to two thousand,—well, we have other step-down transformers that step it down to a lower voltage of one hundred or one fifty.

Q. Then, as I understand you, the electricity is generated by the power at Grand Falls and transferred to this substation and there reduced and distributed?

A. Yes sir.

Q. This substation is located at what point in the city of Joplin?

A. Just about the center of Joplin, I think.

Q. Now, speaking of this water power and the steam plant in connection with it, whether or not Mr. Myers they are all connected to the same shaft, so that they may be used either all together or separate?

Mr. MONTGOMERY: I object to that for the reason that it relates to machinery and property, not only outside of the city of Joplin, but outside of the county of Jasper.

A. The best experts in the United States were employed to put in the shafting as the company was desirous of having nothing but the very latest and best put in use, and it is in my opinion *it is*
115 the finest line shaft there is in the country.

Q. How long is it?

A. It is so arranged that you can run one water wheel and one engine, or you can run two water wheels and one engine, or you can run one engine and one water wheel, or run two engines and one water wheel and the line shaft itself is over one hundred feet in length.

Q. What is its diameter?

A. Runs from six to eight inches.

Q. What property and appliances have the company at Grand Falls that supplies this water power?

By Mr. MONTGOMERY: I object to that because it is irrelevant and immaterial, and tends to prove no issue raised by the pleadings in this case.

A. If I understand the question, the water power is supplied by a dam that is constructed across the river for the purpose of furnishing water to the water wheels, and the steam plant is there for the purpose of——

Q. Well, before you go to the steam plant,—what was done for the purpose of providing the water power, in the way of the erection of a dam, or other improvements and appliances?

A. There was a very extensive dam put in there extending across the river.

By Mr. MONTGOMERY: I object to that because there is no testimony to show that that dam was erected since the granting of the franchise by ordinance No. 441, and further, because it is situated in Newton county, outside of the limits of the city of Joplin, and about four or five miles from Joplin.

By Mr. EATON: Go ahead with your answer.

By Mr. MONTGOMERY: I objected to the whole thing; he answered it before I objected.

Q. What is the extent and character of that water power Mr. Myers?

By Mr. MONTGOMERY: I object to that for the reason that it is irrelevant and immaterial, and because the water-power
116 plant is situated in Newton county, about five miles from Joplin.

A. It is a very fine water power, and has about two thousand available horse-power there all the time, with the possible exception of two or three weeks during the year when the dry season starts in.

Q. Was there any considerable fall in the stream at that point before the erection of the dam?

A. Yes sir.

By Mr. MONTGOMERY: I object *for* that for the same reasons stated in the last objection.

Q. What is the head of water there, the average head of water supplying the power?

By Mr. MONTGOMERY: I object to that for the same reasons stated in my last objection.

A. My recollection is now, about twenty-four feet.

Q. How is this power utilized for the purpose of running machinery to generate electricity?

By Mr. MONTGOMERY: I object to that for the same reasons stated in my last objection.

A. The water wheels are connected with a rope drive to the shafting on to which dynamos are belted.

Q. Was property acquired on both sides of the stream and does the complainant company own the property so acquired for the purpose of maintaining this water power?

A. Yes sir.

By Mr. MONTGOMERY: I object to that for the same reasons stated in my last objection.

Q. Is this dam and water power part of the property of the complainant described in the invoice heretofore introduced in evidence?

A. Real estate and——

Q. Yes?

A. (Examines invoice.) Yes this is correct with the exception that since this was made the company bought additional property down there.

Q. How much additional property?

117 By Mr. MONTGOMERY: I object to that for the same reasons stated in my last objection.

A. I think they have bought—I don't remember exactly but it must be several acres.

Q. Now, in making all of these improvements since the making of that invoice in this plant and property, what amount was expended?

By Mr. MONTGOMERY: I object to that for the reason that it is irrelevant and immaterial and tends to prove no issue raised by the pleadings in this case.

A. There was between eighty-five and ninety thousand dollars additional money expended.

Q. That is the amount additional to the amount named in this invoice?

A. Not included in that invoice.

Q. Did the complainant company, after it acquired the property and rights of the Southwestern Missouri Light & Power Company—I mean the Southwest Electric Light & Water Power Company—continue to operate and furnish public lights to the city of Joplin under the contract introduced in evidence with the city?

A. Yes sir.

Q. Did it continue to furnish such public lights until the expiration of the term named in that contract?

A. Yes sir.

Q. Was the term extended?

A. Yes sir.

Q. At whose instance and request, and upon whose application was the extension made?

A. Upon the request of the city.

Q. At the time that request was made for the extension, which I believe, was about the 9th day of May, 1899, was the city, at that time, was the city engaged in constructing an electric light plant of its own?

A. No sir, they were talking about it.

Q. Talking about it?

A. Yes sir, talking about it.

Q. You don't know whether construction had actually begun or not?

A. I couldn't tell without referring to my records.

Q. What was the purpose of extending it for only four months?

A. The city expected to have their own plant in operation by that time to light their own streets.

118 Q. How did you operate this plant, Mr. Myers, through what kind of an agent or officer at Joplin?

A. We had a superintendent located there who had charge of the Joplin business.

Q. Was that superintendent under your direction and control?

A. Yes sir.

Q. Did he report to you?
A. Yes sir.
Q. After the expiration of this expension of four months, did the city at any time make application for a further extension of the contract to furnish public lights?
A. No sir.
Q. If such application had been made, would it have been the duty of your superintendent to communicate the same and report it to you?
A. Yes sir.
Q. Did you ever receive any such report from him that an application had been made for an extension of the contract to furnish public lights after the expiration of the four months' extension?
A. No sir.

By Mr. MONTGOMERY: I object to that last question and answer because it seeks to bind the city by some report that the superintendent made or did not make to Mr. Meyers, the general manager.

Q. After you ceased to furnish public lights to the city of Joplin, what was done with the appliances used in public lighting?
A. The lamp was put in as the occasion required for commercial lights.
Q. For commercial lights?
A. Yes sir.
Q. You continued to furnish arc lights of the same character as had been used in city lighting for commercial lighting?
A. Yes sir.
Q. Were you connected in any way with the old Merchants' Electric Light & Motor Company?
A. No sir.
Q. Known as the Freeman contract or franchise?
A. No sir.
Q. Upon the purchase of the Freeman property by the Southwest Missouri Light Company, did you assume possession and
119 charge of that property?
A. Yes sir.
Q. Was there any public lighting connected with that property?
A. No sir.
Q. What was being done with reference to furnishing light by that company at the time the Southwest Missouri Light Company acquired its property?
A. They were furnishing light service to the citizens and inhabitants of Joplin.
Q. What was done from the time of the acquiring of that property down until the granting of the temporary injunction in this suit by the complainant company towards furnishing or continuing to furnish the commercial lights in Joplin?
A. After we acquired the plant referred to we continued to operate the steam plant for two or three months until such time as the service could be increased at Grand Falls, and then it was all handled

from there through the substation at Joplin and the Freeman plant was shut down.

Q. Well, did you from time to time after that continue to extend your commercial lighting and the number of customers that you had taking commercial lights?

A. Yes sir, extending all the time.

Q. What did you do with reference to increasing your power, both electricity and power to generate electricity, at Grand Falls?

A. Well, the power was increased from the,—the horse-power capacity at the plant at the falls was increased at about the time we took that plant up to the time I left it, from about six hundred and fifty horse-power capacity to about two thousand.

Q. Why did it become necessary to increase the horse-power capacity of the power plant?

A. Well, Joplin was growing very rapidly and we found it necessary to increase our plant to keep up with the business as Joplin grew and increased in population or extended itself.

Q. Did you from time to time increase your power plant down there so as to furnish sufficient power to generate electricity to carry out contracts you had made for commercial lighting?

120 By Mr. MONTGOMERY: Defendant objects to all these statements about increasing the power plant in Newton county Missouri.

A. We only increased our line for commercial lighting, but a very short time before the contract with the city expired we put in extension service for that also which only run a short time until the contract expired.

Q. Did you put that in at the request or consent of the city?

A. Yes sir, at their request.

Q. They had then requested you to furnish a large amount of additional public lights for lighting?

A. There was four or six additional lights ordered in a short time before the contract expired with the city for public lighting.

Q. Did you hear or was any report made to you what steps were being taken by the city towards erecting their own plant?

A. Yes sir, our superintendent reported that the city were—well, in fact, certain members of the council down there had been talking more or less about a municipal plant for two or three years, it was a sort of popular idea to build a municipal plant.

Q. For what, public or commercial lighting?

By Mr. MONTGOMERY: Now I object to that statement made by some member of the council for the reason that it is indefinite, uncertain and hearsay.

A. Both.

Q. Both—you then heard of this agitation from the time it began?

A. Well, I talked with some of the members of the council about it.

Q. Well, do you remember when they passed an ordinance pro-

posing to issue thirty thousand dollars in bonds and erect their own plant?

A. Yes sir, I remember such an ordinance was passed.

Q. What at that time had you been doing with reference to the increase of the power at your plant?

A. Well, we were increasing our facilities down at the falls.

121 Q. How?

A. By enlarging the buildings and putting in new machinery, as fast as we could get it.

Q. How long prior to the passage of that ordinance of which you speak had you been engaged in this work of increasing your power at the power plant?

A. Well, we had been preparing for it for over a year, getting ready.

Q. What part of this expenditure of eighty-five or ninety thousand dollars was laid out in the improvements necessary to give this increase of power that you are speaking of, now that you were engaged in making at the time the city passed this ordinance to erect its own plant?

A. Well, I should say about sixty thousand dollars.

Q. Did you have sufficient power down there to generate electricity to supply all of the commercial lighting in Joplin, Webb City and Carterville, considering their growing condition, and following their growing condition with an increase as those towns or cities grew, I am speaking of power to generate electricity?

A. The demands were very sudden, very sharp down there, and there may have been a time when we did not take on any new business on account of not having our power plant fully completed as we started out to.

Q. When questions of that kind arose, or sharp changes occurred in this Joplin community, what did you do with reference to attempting to supply your plant with sufficient power to meet any demand that might arise?

A. Well, we were working not only night and day, but on Sundays to get our plant extended to keep up with it.

Q. Was that condition going on at the time they passed this ordinance to establish a public lighting plant in Joplin?

A. Yes sir, we were getting the plant in shape to do that.

Q. How much of this horse-power that you speak of was

122 actually necessary to run the plant at the time when you were doing the city lighting as well as commercial lighting, that is the time about August—well, say, 1899?

A. About four hundred and fifty horse-power.

Q. How much horse-power did you actually have at that time?

A. We had two water wheels developing two hundred and fifty horse-power each, and an engine that developed one hundred and fifty horse-power.

Q. You had then seven hundred horse-power?

A. Six hundred and fifty horse-power.

Q. And how much horse-power did you say you put in there by this new machine steam plant, and this connecting of the line shaft and

the putting in of the new water wheels, how much did you say you added to it?

A. At the time I severed my connection with the company, they had two thousand horse-power available, which I understand they have now; the city was growing so fast, so rapidly we didn't know where it would run to, so we thought it would be necessary to make big preparations for increased business.

Q. Had you contracted for the work for that purpose at the time the city stepped in and passed an ordinance to do its own lighting?

A. I can't say that it was under contract, that class of work required a great deal of study and thought, it was a very, very important engineering job, it may have—I don't know whether any work was under contract or not, but the plans were being discussed pro and con.

Q. As I understand you, for the purpose of meeting the requirements of this growing city; the work was under contemplation?

A. Yes, sir.

Q. Are you familiar with the system and plan of lighting known as the incandescent lighting?

A. Yes, sir.

123 Q. Something has been said in this suit about the lights not being satisfactory, and not being steady and not of the candle power, that is, a sixteen candle wasn't a sixteen-candle power, and so on; whether or not Mr. Myers, in the operation and running of this character of lights, they are not subject to more or less interruption in the ordinary course and conduct of that business?

By Mr. MONTGOMERY: Now I shall have to object to that, Mr. Eaton, as being leading.

A. The proper furnishing of the sixteen-candle light might not be the fault of the company, it might be the fault of the person whose building was wired by himself in getting the wires too small.

Q. Are they subject to more or less interruption for various causes?

By Mr. MONTGOMERY: That is objected to as being leading and suggestive.

A. Yes sir.

Q. Now, in furnishing commercial lighting, Mr. Myers, I understand you furnish two kinds, the incandescent and the arc lights?

A. Yes sir.

Q. That is, some commercial customers wanted an arc light and others will want the incandescent lights?

A. Well, some have both.

Q. At the time the city commenced to agitate the building of the public plant, at the time this ordinance was passed, and at the time of the granting of this injunction, did your company have sufficient power, plant and equipment to meet the demand that was made upon it for the commercial lighting, taking into consideration the improvements you had in contemplation and were then making?

By Mr. MONTGOMERY: Well, I object to that, that is too indefinite; the question is whether he had the power, and the next question is if he contemplated getting the power; I object to it for the reason that it is too indefinite.

A. We had the power to furnish all the service which we undertook to furnish.

124 Q. Now in adding to the power of the electric light plant, it not only contemplates additions to the power for running the machinery that generates the electricity but for the generators themselves, doesn't it?

A. Yes sir.

Q. At the time that this ordinance was passed and the city proceeded to engage in the business of public and commercial lighting, did you have in contemplation and did you afterwards furnish additional generating power?

By Mr. MONTGOMERY: I object to the question with reference to what they contemplated doing, for the reason that it is irrelevant and immaterial to any issue in this case.

A. I know from the time that the Southwest Missouri Light Company commenced furnishing lights down there up to the time I left, we had increased our incandescent dynamo capacity from one thousand lights to six thousand lights, and we had increased the arc-light capacity from fifty lights to one hundred and fifty lights or possibly two hundred and fifty lights.

Q. How many arc lights were you using at the time you quit in these towns of Joplin, Carterville and Webb City?

By Mr. MONTGOMERY: I object to all that testimony relating to the increase of the arc light and incandescent service so far as it refers to the dynamo machinery, for the reason that the testimony shows that all that machinery was located in Newton county, about five miles southwest of Joplin.

A. O, I suppose about two hundred or two hundred and twenty-five.

Q. What of?

A. Of arc lights.

Q. Of arc lights; how many did you say you had capacity for?

A. Well, when I severed my connection with the company, they had in, they had in two one-hundred-light machines, and three fifty-light machines.

By Mr. MONTGOMERY: I object to that because it is submitted and conceded that all of this machinery referred to by the wit-

125 ness was located outside of the city of Joplin, about five miles from the city of Joplin.

Answer continued: Well, I might modify that answer by saying it may not have been over two hundred and fifty capacity of arc light capacity, but we had that many at least.

Q. Now all this arc-light business, so far as Joplin was concerned,

was shut off when the contract expired, that is when the extension agreement terminated?

A. Yes, sir.

Q. How many public lights were you furnishing at that time?

A. Somewhere between fifty and sixty.

Q. Did that power when withdrawn from the furnishing of arc lights, enable you to furnish more power for incandescent lights?

A. Yes sir.

Q. And city lighting.

A. Yes, sir.

Q. Do you know when the city completed its plant and commenced to operating it, or when they thought they had it completed?

By Mr. MONTGOMERY: I object to that because the question is indefinite; he asks the thoughts of the city that can only come through its council.

Q. When was it reported to be completed?

By Mr. MONTGOMERY: Well, I object to that for the reason that it simply calls for idle rumor.

A. Well, my best memory serves me, I was in Joplin along about January 1st, 1900, and I don't think the city plant had started at that time.

Q. Let's see, when did you sever your connection as manager of the company?

A. November, 1899.

Q. At that time, the city had not started its plant?

A. No, sir.

Q. And at that time the complainant company was engaged in furnishing the commercial lighting to the people of the city of Joplin?

A. Yes, sir.

Q. Was this all done, Mr. Myers, under this franchise that the complainant company acquir[illegible] by its purchase of the property and franchise and rights of the Merchants' Electric Light & Motor Company?

126 By Mr. MONTGOMERY: I object to that because it calls for no testimony but calls for a mere conclusion of the witness, and part of it referring to all this that was done would be impossible, as part of it was done under that franchise, but much of it was done before the company acquired the franchise.

Q. Answer the question whether it was done under this franchise contained in ordinance number 441?

A. Yes sir.

Cross-examination by Mr. MONTGOMERY:

Q. You testified to an inventory of the property of the company dated March 20th, 1897, who wrote that inventory?

A. Let me look at it and see if I can tell. (Witness examines in-

ventory.) I couldn't say positively, it may have been gotten up in my office.

Q. Then you don't know where or when or who wrote it?

A. If it was gotten up in my office, I prepared it from data which I had on hand from the heads of departments, and my knowledge of the company's property.

Q. But if it was written in some other office, you did not?

A. If it was written in some other office, I verified it; it was correct, I know it was a correct inventory, because I checked it over carefully; I can say that I went over it, yes sir.

Q. How do you know that you went over it?

A. I can tell by my figures on it, notations.

Q. Are those figures all yours?

A. Yes sir, all those figures are mine.

Q. Do you know who got up this inventory, what officer of the company?

A. The inventory may have been prepared in my office from data which was furnished me by the superintendent, and the records of the company's property.

Q. But you don't know that it was?

A. Well, I know that the inventory was correct.

Q. Well, I say you don't know who got it up?

127 A. Well, I don't know who wrote that machine, I couldn't say positively at this time who made the typewriting, that may have been done by some clerk.

Q. You didn't go over all these various articles and set them down, and put the entry in that you had them?

A. Yes sir, I checked that all over.

Q. With the articles themselves?

A. I knew we had all that property.

Q. Did you count all these transformers, there are no checks opposite those are there?

A. I think I have my check opposite all of them there.

Q. I don't see any checks on this?

A. Well those figures there are all mine.

Q. Then you went over each individual article and saw the article and wrote it down on the paper?

A. I knew that was correct when I put it down on the paper, yes sir.

Q. You went over all these articles in Joplin, Webb City and Carterville, and set them down on the paper, did you?

A. No, I didn't go and look at each individual transformer I knew it was there, the list was made up and then it was checked over and known to be correct.

Q. Then somebody else went to the various places and saw that these articles were there and took an inventory?

A. Well, the company's records show they were there, if the superintendent had reported anything short there would have been an investigation made.

Q. So from that you know it must necessarily have been there?

A. There is no doubt but what it was there.

Q. That's all you know about these articles being there?
A. Well, I am morally sure they were there.
Q. Do you know how many meters you had in stock?
A. Well, the list shows.
Q. Yes, I know, but you have no information, you don't know yourself do you, you couldn't tell within twenty-five, do you
128 know whether there is fifty, twenty-five or one hundred?
A. Well, I can tell by referring to the list.
Q. That's it, you have no individual recollection of it, have you?
A. I don't remember now whether I counted the meters or not, the probabilities are I didn't.
Q. The probabilities are you didn't?
A. But the records show how many meters have been sent there.
Q. Somebody went to the books and got that list and made this out, or they went and saw the property, you don't know which, do you?
A. Well, I don't think there is anything wrong with the inventory.
Q. Now, transformers, how many transformers did you have at Webb City and Carterville at the time this was made?
A. The list shows exactly.
Q. Well you don't know do you?
A. Well I may not have seen every one of them but I saw some of them.
Q. How many were there?
A. The list shows exactly.
Q. Can you tell without the list?
A. I can't remember that three years ago.
Q. Then you have no recollection of it?
A. No sir.
Q. You are simply swearing then by this list, are you, you have no independent recollection?
A. I think that is the best information I could possibly have had, it is written information in my own handwriting and is the best possible information I could have.
Q. All you did was to take up a list that somebody else made and you don't know how somebody else made that, and you carried forward what you considered the property was worth?
A. I know this, that the property,—if there had been any deviation in our property, it would have been looked into and the reason given what had become of it, I know that.
Q. The superintendents, the various men who had charge of these various properties were very prompt in reporting to you any loss, and the fact that there was no such report of loss leads you to believe that you had all this property?
A. Yes sir, we surely had the property.
Q. So you don't know whether this was made from the
129 books in that way, or whether some officer went actually on the ground to see whether you had this property?
A. That was all checked up.

Q. I say, but you don't know whether this list was made up in either of those two ways?
A. I know it was all checked up.
Q. How do you know, you wasn't there when it was done?
A. I don't remember whether I was or not.
Q. Well, you didn't go and count each article, you didn't go over the pole line, you didn't go and count the number of glass insulators, did you, that the company had?
A. Didn't have to count them.
Q. How many heavy glass insulators did the company have?
A. At the time the inventory was made up?
Q. Yes?
A. Let me see the list.
Q. Now that's it, you don't know without the list?
A. No man living could keep that in his head.
Q. That's the point I am getting at, Mr. Myers, you are simply swearing by this list, and you didn't make the list.
A. I am certain the list is correct, because I wouldn't check it if it wasn't.
Q. This refers to property in Carterville, Webb City and Grand Falls, does it not?
A. Yes sir.
Q. Now Carterville is an independent city by itself, is it not?
A. Yes sir.
Q. Situated about six miles northeast of Joplin, is it not?
A. I think so.
Q. And Webb City is an independent city by itself, is it not?
A. Yes sir.
Q. And that is about how far from Joplin?
A. I think that it is about five and three-quarter miles, something like that.
Q. Close to six miles from Joplin, and the corporations are entirely separate and independent from each other?
A. Yes sir, I understand they are.
Q. The property you had in Webb City and Carterville, you were operating by reason of rights you had obtained from the city
130 councils of those cities?
A. Yes sir, we were operating them by franchises we owned in those cities.
Q. And the doing of commercial lighting in the city of Joplin would not interfere with your properties or light service in either of those cities, would it?
A. I don't think so.
Q. And this machinery you speak of at Grand Falls, much of it is for the purpose of supplying those cities, isn't it?
A. Part of it is.
Q. And where does your pole line for the supplying of Webb City and Carterville run?
A. Runs from Grand Falls to Carterville.
Q. Through the city of Joplin?
A. Yes sir.

Q. Is that pole line insulated or not?
A. You mean the poles?
A. No, the wires?
A. Some of them are, the wires are insulated, all the Joplin service is insulated, not the service running from Joplin to Webb City. I think there is two or three wires bare wires.
Q. Where are those wires, what part of the line?
A. I don't remember the exact location now.
Q. Is your pole line now running from Grand Falls into Joplin insulated wires?
A. I think so.
Q. Are you sure it is?
A. I think it is all insulated, yes sir.
Q. Is the pole line running from Joplin to Webb City, or through Joplin, insulated?
A. Well, I can't say it is all insulated, all the wires are insulated with the exception of some two or three of the wires, I don't know how many wires, it was not deemed necessary to insulate the wire from Joplin to Webb City on the high-tension circuit.
Q. The voltage for electric- carried over a pole line is large, isn't it?
A. That depends.
Q. Well, you furnished both arc and incandescent lights in Webb City, did you not?
A. Yes sir.
Q. And the voltage is high for both of those, for arc lights, anyhow?
A. That would depend upon conditions.
Q. If any one would come in contact with a bare wire on
131 that pole line, it would injure them very severely or produce death?
A. I don't know whether it would or not, it would depend on conditions.
Q. It would ordinarily kill them if they were on damp ground wouldn't it?
A. A man couldn't ordinarily reach it from damp ground.
Q. Suppose that one of the wires was grounded from this pole line, isn't there some element of danger, that is to say, are not people injured by reason of these pole lines?
A. I have not reason to think that that pole down there would injure anybody, because I have not heard of it injuring anybody.
Q. Well, you have heard of that being done, people being injured by those wires?
A. I have heard of people being injured on an electric wire which was crossed by another wire.
Q. You have no authority from the city of Joplin to run this pole line through the city to supply other cities?
A. We had a franchise to do business there in the city of Joplin.
Q. But you have no authority to run a pole line through the city of Joplin to supply the other cities?

A. We didn't run a pole line for that purpose, we supplied the other cities on the pole line that we had in Joplin.

Q. And the Southwest Missouri Light Company are doing that now are they not, supplying Webb City and Carterville with a pole line run through Joplin?

A. Yes sir.

Q. And that city has a population of over twenty-six thousand inhabitants?

A. I don't know what the census is.

Q. And the pole line runs through the upper part of that city, the most populous portion of the city?

A. I don't know about that either.

Q. Do you know where the pole line runs?

A. I know it when I am down there, yes.

Q. This inventory purports to give every cross-arm, pole and everything connected with it, doesn't it?

132 A. Yes sir, the pole line may not have been on the street at the time that invoice was made, there may have been lots of changes made there, it may have been changed.

Q. You don't know whether this property is there or not now?

A. I haven't seen it for two or three weeks.

Q. You never saw some of it, did you?

A. Well, what part of it?

Q. Well, do you say that you have seen all of this property, every bit of it?

A. Most of it.

Q. Well, then you are swearing to an inventory of property, some of which you never saw and don't know whether it is in existence or not?

A. I know the property, the real estate, I went down and saw that.

Q. Yes, down in Newton county?

A. The power plant is there, I don't think that has floated away, and the transformers and all the other property; we knew that the property was sent there, and knew it was there because it has all been carefully checked and gone over.

Q. Now at the time you bought the Freeman plant, did your company have a plant in Texas?

A. No sir.

Q. Well, you sent one arc dynamo to Texas that was in the Freeman plant, didn't you?

A. The Southwest Missouri Light Company never sent any property there that I know of.

Q. Don't you know that after the Southwest Missouri Light Company bought the Freeman property along in September, or October of that year, that your company sent one of its arc dynamos or one of its dynamo- to some plant down in Texas?

A. Yes, I think the dynamo that was in the Freeman plant was sold to a company in Texas.

Q. Do you know how much property in the Freeman plant was sold to that company?

A. I think the dynamo was sold.

Q. Well, was there any other property?

A. I don't think so, unless it was the switch-board, I don't know whether the switch-board was or not.

133 Q. Was that before this invoice was made?

A. I couldn't say positively whether it was before the invoice was made or not.

Q. This inventory didn't include any property that your company had in Texas or Mexico?

A. No, we never had any property in Texas or Mexico.

Q. So you are sure that this inventory does not contain any property that you had in any other State or foreign country?

A. Yes sir, I am sure it does not.

Q. But a large part of it is in Newton county?

A. Some of it is in Newton county.

Q. The city of Joplin is located in Jasper county?

A. Yes sir.

Q. Grand Falls is located in Newton county, is it not?

A. Yes sir, I understand it is.

Q. You say you were interested in the Southwest Electric Light & Water Power Company?

A. Yes sir.

Q. That was the predecessor of the complainant, The Southwest Missouri Light Company?

A. Yes sir,—how is that?

Q. That was the predecessor of the complainant, The Southwest Missouri Light Company?

A. No, the Southwest Missouri Light Company,—I don't know what you mean.

Q. I mean the Southwest Missouri Electric Light and Water Power Company was the predecessor of the complainant, The Southwest Missouri Light Company?

A. The property of the Southwest Missouri Electric Light and Water Power Company was acquired by the Southwest Missouri Light Company.

Q. That is what I am asking you; why was this change made, why was this Southwest Missouri Electric Light and Water Power Company changed by the foreclosure of the mortgage, why did it become the Southwest Missouri Light Company, what was the occasion of that change?

A. I would have to refer to the records.

Q. They might not show?

A. I guess they do.

Q. Well, how was it about the management, the officers or stockholders of the two concerns, were about the same parties officers and stockholders in both companies?

134 A. No, sir, I didn't have any stock and had no interest whatever in the Southwest Missouri Electric Light and Water Power Company, and several other people I know had no interest in it, and we afterwards had in the Southwest Missouri Light Company.

Q. When you bought out that other company, you assumed the

contract made with the city and that company to furnish the city light for five years did you not?

A. Yes, sir.

Q. You kept the provisions of that contract, did you?

A. Yes, sir.

Q. Was that agreement that you should keep that contract, keep its terms, when you became the Southwest Missouri Light Company?

A. As I remember the contract was part of the assets that we bought.

Q. Then you took that contract and assumed this responsibility?

A. Yes, sir.

Q. Mr. Myers, can you give the names of the officers and directors and stockholders of the Southwest Electric Light and Water Power Company, name all that you can of them?

A. I don't know who the directors were, I have no way of knowing who the stockholders were. I had no right to know.

Q. You were not interested in it, you say?

A. No, sir.

Q. You had no connection with it?

A. I wasn't an officer in it, I was only the general manager of the company.

Q. Did you have any stock in it?

A. No, sir.

Q. Who were the other officers of the company at that time?

A. I don't remember who they were.

Q. Well, can you tell how it was that the property of that company was sold, and the other company bought it, how it was that it was sold, can you tell how that came about?

A. No, sir.

Q. Well, now, the complainant,—is there not a mortgage on the property of the complainant, or has there been since its formation?

A. The Southwest Missouri Light Company?

Q. Yes?

A. Yes, sir.

Q. How much?

A. One hundred and fifty thousand dollars.

135 Q. And that mortgage was placed upon it at its organization and has continued on it ever since?

A. I don't know when it was placed on it, I know it is on there.

Q. And who was that mortgage to, you don't know who holds it?

A. Who holds the bonds?

Q. Yes?

A. No sir.

Q. You don't?

A. No sir.

Q. Do you know whether it has a power of sale, whether it is secured by a deed of trust, and whether that deed of trust has a power of sale in it or not?

A. Power of sale in the bonds?

Q. Power of sale in the mortgage given to secure the bonds?

A. I don't understand what you mean by a power of sale.

Q. There was a deed of trust to secure the bonds, was there?

A. Yes, I suppose so, yes sir.

Q. Do you know whether that contained a power to the trustee to sell the property?

By Mr. EATON: We object to that as not the best evidence and not proper cross-examination, and not material to the issues of the case.

A. I suppose there was a power in there in case they didn't pay the interest.

Q. Do you remember of the voting of bonds for the building of the city plant?

A. I don't remember exactly, it was in the spring of 1889 I think some time.

Q. The Southwest Missouri Light Company, the complainant, built an additional steam plant at the Falls some time in 1899, did they not?

A. Well, they were building in 1899, and previous to that getting ready to.

Q. I asked you if they built a steam plant, not if they were getting ready to, who built this steam plant?

A. It was built when I was general manager.

Q. Who was the contractor?

A. There was several contractors; the steam plant itself was constructed by Hugh Matthews.

136 Q. Well, the building containing the steam plant who built that?

A. That was put up by a contractor I think by the name of Johnson.

Q. Didn't Al. Overall build the foundation to that steam plant?

A. Al. Overall did the blasting of the pit which the fly-wheels went in.

Q. What was the first work done looking to the construction of the additional steam plant that you built some time in 1899, or finished in 1899?

A. The first work was to get the plans.

Q. I am not talking about the plans, the first work that was done on the ground towards the actual construction of the plant.

A. That was early in 1899.

Q. Well, who was it that built the foundation for the building?

A. I sent a man down from here to lay it out, to lay off the foundation for the building.

Q. I didn't ask you that, I asked you who was the contractor who built the foundation for the building?

A. The contractor who built the foundation was the man who built the building, that was a man by the name of Johnson.

Q. Where does he live?

A. At that — he, I think, lived at Coffeyville, Kansas.

Q. Do you remember when he commenced building the foundation for that building?

A. It was very early in 1899.

Q. From whom did you buy the boilers and engines that went into that building?

A. The boilers and engines were all put in by Hugh Matthews under contract.

Q. He lives where?

A. Kansas City.

Q. Do you remember when this foundation was commenced?

A. Well, it was in the early part of 1899.

Q. Well, do you remember when that steam plant was completed?

A. The steam plant was completed—I think we had a grand opening on the 15th of September, 1899, is my best recollection, four or five hundred citizens were invited down there to look at it.

Q. Was that the time when it was completed?

137 A. Yes, practically completed then.

Q. And that is the time when you had that grand opening?

A. Yes, that is when the new steam plant was completed.

Q. That added considerable to your power?

A. Yes sir.

Q. And prior to the completion of that steam plant, what other additions did you make to your power there?

A. We put in,—well right along at the same time we put in new water wheels.

Q. When did you commence that work?

A. That work was——

Q. Not when you got the plans, and not when you thought about it, but when you actually commenced work, let the contracts to the party to put it in?

A. We couldn't commence until the engines were ready to operate, because we didn't use any water at that time, we run by engines.

Q. Then this increase of the water-wheel power was that done after the completion of the steam plant?

A. It only took a short time to put in new wheels.

Q. Was that what you had reference to?

A. Yes sir.

Q. Then you had no increase of your wheel capacity before that time?

A. Previous to putting in new wheels we had two wheels that developed two hundred and fifty horse-power each.

Q. Those were in there when you bought the works?

A. Yes sir.

Q. There was no change made until the steam plant was completed?

A. No change made in those wheels, no sir.

Q. Then the only increase of water power that you had, that is the first increase was the completion of your steam plant in the middle of September, 1899?

A. Well, there was a steam plant put in there, another steam *steam* plant put in there, one hundred and fifty horse-power engine was put in there.

Q. When was that put in there?

A. Well, that was put in there, I guess about a year previous to the time we bought the property.

Q. That was put in under the administration of the predecessor of this present company?

A. Yes sir.

138 Q. Well, that wasn't nearly sufficient to do the business that you had down there?

A. It was when it was put in.

Q. I know*m* but it wasn't in the years 1897, '98 and '99?

A. I think it was in '97 but I don't know about '97, I know it wasn't in '99, the town had grown pretty fast.

Q. Isn't it a fact, Mr. Myers, at the time you bought the Freeman plant, and stopped the operation of the Freeman plant in the fall of 1899, along in September, that immediately after that you had a shortage of power, quite a long time that continued up until the time the city voted its bonds?

A. No sir, that is not a fact.

Q. But you did have a shortage of power from the time that you bought the Freeman plant or from the time you ceased its operation in 1897 for a year at least?

A. My recollection is there was a shortage of water there in the water power part of the time, at one time an extraordinary dry season that has never been known before, at least in that country, for two or three weeks.

Q. Then, in answer to my question whether or not you had sufficient water power from the 15th of September, 1897, for a year what is your answer now, did you or did you not have it?

A. Well, I say there may have been a short time there, I think there was two or three weeks about that time that it was short.

Q. Then outside of that two or three weeks you had ample power for all your lights up to September 15th, 1899?

A. I think so.

Q. That is your recollection?

A. Yes sir.

Q. After the purchase by your company of the Freeman plant, and after the time that you stopped operating that along in September, 1899, your company, or The Southwest Missouri Light Company, the complainant, has had or maintained no plant in the city of Joplin or its suburbs for the generation of electricity, has it?

A. I want to correct that previous answer there in which I stated about the power, one reason we was short of power at one time you mention was that one of our water wheels met with an acci-

139 dent and we was laid out for a couple of weeks which threw us into a shortage of power because one of the main gears on the water wheel broke.

Q. Then outside of two or three weeks that you had dry weather and two or three weeks when one of your water wheels was out of order, you had ample power to run all your lights subsequent to September, 1896, that is your answer now, is it?

A. Yes sir, that is correct,—we didn't have the Freeman plant in 1896, did we?

Q. For a year subsequent to the 15th day of September, 1896, did you have ample power to run all the lights that you had?

A. I don't remember of there being any shortage of power there except the time that we met with this accident on this water wheel and the time which I referred to as the water being low.

Q. And that would amount to about six weeks altogether?

A. O, probably four weeks.

Q. Four weeks altogether?

A. I should judge so, yes sir.

Q. At all other times during that year subseqient to September 15th, 1896, you had ample power?

A. I think so, yes sir.

Q. And the same condition continued for the next two years after that, that is for the two years subsequent to September 15th, 1897?

A. I think we had power to furnish all the service that we undertook.

Q. After the 15th of September, 1897, for two years?

A. Yes sir.

Q. Mr. Myers, the Freeman franchise, or the Merchants' franchise, that the complainant purchased from that company, contained a clause for one light erected on the front porch of Freeman's foundry, so as to light the Frisco railroad crossing on Main street, and to be kept in order without charge or expense to the city; after your company the complainant bought out the Merchants' or Freeman Company, did you maintain that light in accordance with the provisions of that franchise, or not?

140 A. There was a light maintained there, yes sir.

Q. By your company?

A. Yes sir.

Q. All the time?

A. I don't know positively about that, the light might have been ordered out, I couldn't tell without referring to the records.

Q. Did you make any charge for it?

A. No sir.

Q. Then you swear here, that your company maintained that light there free of charge to the city, for the three years subsequent to the time you purchased that franchise?

A. To the best of my recollection, they did, yes sir.

Q. They are maintaining it now, are they?

A. I don't know.

Q. Well they maintained it after——

A. I don't think they are maintaining it now, they are not maintaining any lights down there now for the city.

Q. That has no reference to street lights, has it?

A. I don't know what became of the light, I don't know how long it was maintained, or anything about it.

Q. Then you have no information on the subject?

A. Not at this time, no sir.

Q. Did you ever have?

A. I knew the light was there.
Q. Did they ever charge for it?
A. I don't think they did.
Q. Did any of your superintendents talk to you about the light?
A. I know there was a light maintained there by Freeman.
Q. Did any of your superintendents ever discuss the matter with you, as to whether or not you were charging for the light?
A. No, we never charged for the light.
Q. How do you know you didn't?
A. That is my best recollection at this time.
Q. Who did you ever discuss the matter with?
A. I don't think I ever discussed it very much with anybody, I don't know as the question came up, I don't remember of discussing it; I never had my attention called to it; I don't think the question ever came before me, I understood there was a light there.
Q. Who did you understand it from?
141 A. I heard them talking about it.
Q. You don't know of your own personal knowledge whether there was a light kept there or not?
A. My best recollection is that I saw the light there.
Q. When did you see it?
A. About that time.
Q. About the time you bought Freeman out?
A. Yes sir.
Q. How long did you keep it there?
A. Well, I don't know how long it was kept there, don't know whether it is there now or not.
Q. Didn't you hear of Mr. Kline offering a resolution in the council for the committee on fire, water and gas, wasn't this resolution offered in the council on the 3rd of September, 1896, for the committee on fire, water and gas, to see the superintendent or officers of the complainant and ascertain whether or not they would maintain that light free of charge as Freeman had done; did you know anything about that resolution, did you ever hear anything about a resolution of that kind?
A. I don't remember of having heard anything of that, no sir.
Q. Do you know anything about a report having been made by Mr. Kline the chairman—no, not by Mr. Kline, by Moore—by Moore, the chairman of the committee on fire, water and gas, at the next meeting of the council, or within a few days after the 3rd day of September, 1896, to the effect that he had seen the superintendent of the Southwest Missouri Light Company, and that that gentleman had informed him that the company were under no obligations to maintain that right there at all; did you ever hear anything about that?
A. I don't remember of ever hearing anything about, I don't think that it was ever brought to my notice.
Q. Then you don't know but very little about that light, do you, Mr. Myers?
A. No sir, I don't know very much about that light.
Q. Do you know anything about a petition being presented by

Mason, a South Joplin alderman, in July, 1897, signed by Knoche and seventy-seven others, to establish a light to light that
142 Frisco crossing, did you ever hear anything about that?

A. No sir.

Q. And upon that petition coming in, do you know anything about the council's ordering it in and paying your company for it for all time after that up to the time that you ceased to supply lights to the city of Joplin, do you remember of that?

A. I have no recollection of the light at all having been ordered in,—at this time I don't remember of the light having been ordered in for the Frisco crossing; if it was ordered in I guess we put it in.

Q. Now you spoke about the big mileage of pole lines in Joplin; what streets does that pole line cover?

A. I don't know the names of the streets of Joplin.

Q. Well, you know Main street?

A. Yes sir.

Q. Where did the pole line run in connection with Main street

A. It runs through the alley there, if I remember, I think it runs through all the alleys parallel with Main street; I don't know how many alleys; I know the main pole line goes in on the alley on one side of Main street.

Q. Which side?

A. What side is that post-office on?

Q. The post-office is on the west side?

A. It is on the west side then, I don't know the points of the compass there.

Q. That is the first alley west of Main?

A. Yes sir, that is the first alley west of Main.

Q. Is there any pole line in the alley on the east side of Main?

A. I think so.

Q. Is there any on the second alley east of Main?

A. I don't know, it may be in the street, I don't know, I know that we took the alleys as far as we could.

Q. Well, is there any on the next alley east of that?

A. I don't know whether there is an alley there, is there a street east of that?

Q. I say, is there any pole line on the alley or street, second alley or street east of Main?

A. I would have to refer to the map to answer that.

143 Q. Question is there any pole line on the alley, second alley west of Main, or the second street west of Main?

A. I couldn't tell you without referring to the map.

Q. Could you tell by the map?

A. The company has a map, I think.

Q. That shows the pole lines; could you tell from the map of the town?

A. No, I am not well enough acquainted with the town at this time, it has been a year since I had anything to do with that.

Q. How many pole lines have they in the city of Joplin?

A. Why I suppose they have ten miles there.

Q. You suppose so?

A. Yes sir.

Q. You don't know where it is?

A. I suppose they have ten miles there.

Q. All you have been swearing to about the inventory is from a report you have from somebody else?

A. I have been over the pole lines and examined them when I was general manager, it may have been changed a good deal as the business of the company demanded it, and been rebuilt.

Q. Where was the pole line at the time this inventory was made, where did the pole lines run then, could you tell where they ran then?

A. I couldn't without seeing the map, no.

Q. Then you are swearing by a map of the pole line that you had in the office made by somebody else, you didn't make it?

A. Well, men made it that knew all about it, though.

Q. Well, that was somebody else that knew?

A. No doubt but what the poles were there all right.

Q. "Pole line, Joplin," how many four-pin cross-arms were there in that pole line?

A. Let me see the list.

Q. You can't tell a thing about it without the list?

A. No man alive could, you couldn't yourself.

Q. You have no independent recollection of what you have been testifying to except this list?

A. The list is the best evidence for me to testify from.

144 By Mr. MONTGOMERY: I will now ask that all that testimony regarding this pretended inventory be stricken out and expunged from the record, for the reason that the witness discloses in his direct and cross examination that he neither made it nor saw it made, that he has no independent recollection about it, and has no sufficient knowledge to testify on the subject.

By Mr. EATON: The objection is not quite a correct statement of the fact; the witness said that he checked it over and made the notations and figures upon the inventory.

Q. Now, you spoke of a substation in the city of Joplin, that substation, there are no dynamos in that for the generation of electricity, are there?

A. No sir.

Q. That is simply a station in which the wires from the falls run, in which you get what you call transformers that distribute and spread the currents of electricity is it not—that is what I would term it—disseminates it and distributes the electric current?

A. Transformers in the substation distributes the electricity down through another set of transformers located on the outside.

Q. Now that brick building that you speak of is built on the alley?

A. Yes sir.

Q. On the west side of the street west of Main street called Joplin street?

A. Yes sir.

Q. The company has a small, one-story brick building on the front end of the lot next to the street and this square brick building is built on the alley west of that building?

A. Yes sir.

Q. What is the size of that brick building, about what is the size?

A. It is about—the building on the alley is about probably thirty by sixty.

Q. Thirty by sixty?

A. Yes sir.

Q. Isn't the lot only thirty-five feet wide that you own there?

A. As my recollection serves me, we have a fifty-foot lot
145 there with three buildings on the front.

Q. And you own all of them do you?

A. Yes sir.

Q. This substation only covers thirty feet?

A. Only occupies the back part of the lot.

Q. Is it one or two stories?

A. The substation?

Q. Yes sir.

A. It is about a story and a half.

Q. It is about a story and a half?

A. Yes sir.

Q. I have a letter here Mr. Myers, dated the 23rd of November 1897, you may look at that letter and state whether or not you signed that?—wrote that letter and signed it?

A. (Witness examines letter.) Yes sir, I signed that all right.

By Mr. MONTGOMERY: I will now offer this letter in connection with his testimony.

By Mr. EATON: All right, I have no objection.

Said letter is in words and figures as follows:

KANSAS CITY, MISSOURI, *November* 23, 1897.

Mr. E. C. H. Squire, Joplin, Mo.

DEAR SIR: Your favor of November 19th, notifying us that we must furnish full street service is received. Of course the members of the city council appreciate the reason why we have been unable to furnish the full service, and will state further that you may rely on us to do the very best we can in the way of lights, which I hope will be satisfactory. I regret very much that we have not the power at this time to furnish the complete service, but we expect to have before very long.

Yours truly, GEORGE M. MYERS,
General Manager.

Q. Now, I have a letter dated Joplin, Missouri, 8/16, no year; I would like to have you look at that letter and state whether or not you know the handwriting of Mr. Parsons, superintendent of
146 your company, and state whether or not he signed that letter?

A. (Witness examines letter.) I think that is Mr. Parsons' writing.

Q. Do you know anything about that letter, or the fact that it refers to, or anything in connection with it?

A. I couldn't verify it unless I could look up the records, and see if we have any record of it.

By Mr. MONTGOMERY: I now offer the letter in evidence.

By Mr. EATON: I have no objection.

Said letter is in words and figures as follows:

JOPLIN, Mo., 8/16.

J. H. Spencer, mayor city of Joplin, Missouri.

DEAR SIR: Unless we can make a permanent arrangement for the city lighting we must stop the service September 1st. We have chances to furnish service at much better prices if accepted soon.

Yours truly. SOUTHWEST MISSOURI LIGHT COMPANY.

W. PARSONS, *Superintendent.*

Q. I will ask you to look at this paper signed by John C. Trigg and L. A. Philmore and state whether you know anything about the matter that that pertains to, if so, state what you know about it?

A. This may refer to the four months' extension which the company made.

By Mr. EATON: Let me see it, maybe I will admit it without identification.

By Mr. MONTGOMERY: I will offer in evidence a report signed by John C. Trigg and L. A. Phillmore, in the following words:

This was filed August 29th, 1899, and is an original record in the clerk's office:

Said report is in words and figures as follows:—

147 Honorable mayor and city council:

GENTLEMEN: At the request of the undersigned, Mr. Weare Parsons, superintendent of the Southwest Missouri Light Company, kindly corresponded with the manager of the said company with reference to renewal of contract with said company for arc lamps for the use of the city for a limited period of time, with the result that the company, provided it has extra lamps on hand, and does not cripple its other business, will enter into a contract with the city after September 1st, contract to run from month to month at the price of ten dollars for each arc light so furnished; if proposition as above stated is accepted, contract will be forwarded at once by the general manager, Mr. G. M. Myers.

Respectfully submitted. JOHN C. TRIGG,
L. A. PHILLMORE,
Board of Managers.

Q. A proposition was forwarded to you by Mr. Parsons similar to that mentioned here and you replied as stated here to Mr. Parsons, and authorized him to communicate to these gentlemen the facts as stated in this report?

A. I can't say that I replied as stated there, unless I look up my records; I remember that we extended the light service four months, as the city said at that time they would have their own.

Q. Do you remember stating that if it did not cripple your other business you would enter into a contract with the city after September first from month to month?

A. I think my records will show that we extended the contract four months after it had expired so as to give the city time to get their own plant for lighting their streets, that's what I think we did.

Q. Do you remember anything about your instructing Mr. Parsons to make the contract referred to here?

148 A. I would like to look up my record to see whether my instructions were in the same form as that report.

Q. Then you don't remember whether you did or not?

A. That report don't necessarily embody the instructions that I sent down there; somebody else made that report; I do know positively that we agreed to extend the service four months at the city's request, by that time they said they would have their own plant in operation and operate and light their own streets.

Q. This says "At the request of the undersigned, Mr. Weare Parsons, superintendent of the Southwest Missouri Light Company, kindly corresponded with the manager of the said company," was you the manager then?

A. Yes sir.

Q. Then you was the man that he corresponded with?

A. Yes sir.

Q. Did he write you such a letter as this?

A. I would have to look up my files to see, my files would show.

Q. You have no recollection of this request having been made?

A. My recollection is that the city requested us to furnish service to them for four months for which we entered into an arrangement with them at a stipulated price, and at that time they was to have their own plant in operation.

Q. Then you didn't instruct him to inform the gentlemen that the company "provided it had extra lamps on hand and it does not cripple its other business will enter into a contract, etc.," you didn't send any instructions like that?

A. The instructions that I sent I couldn't tell you about now, but as I stated, we entered into a contract with the city to extend the contract four months.

Q. Well, did you ever make any statements to Mr. Parsons with regard to the matters set forth in this report?

A. I am not responsible for the statements in that report.

Q. I am asking you if you ever instructed Mr. Parsons to that effect?

By Mr. EATON: I object to that because he has told you a half dozen times that he would have to refer to his letter

149 file?

By Mr. MONTGOMERY: I know, I was just simply trying to get him to answer my question.

A. The mere fact that we did extend the service shows there was nothing in dispute about the matter.

Q. Now you spoke of having made eighty-five to ninety thousand dollars' worth of improvements after that invoice was made?

A. Yes, sir.

Q. What were those improvements, when were they made; just enumerate them.

A. Well, they were made from time to time and the plant was increased.

Q. What plant?

A. The plant was increased from six hundred and fifty horsepower to two thousand, and the lines extended, and the whole general plant enlarged.

Q. Well, this plant was increased at the Falls, was it not?

A. Well, the whole general plant was increased, yes, at the Falls and Joplin.

Q. Well, the principal increase was at Joplin and the Falls?

A. Yes, sir.

Q. Well, now, how much was the increase at Joplin?

A. Well, I already stated that I thought that the expenditures at the Falls would probably aggregate sixty thousand dollars, and the balance would be,)

Q. Some of this was in Webb City that you refer to?

A. No I don't think we expended any of that money in Webb City.

Q. Well now what did you build in Joplin after that invoice was made?

A. We extended the lines.

Q. What lines?

A. Electric light lines.

Q. Well, what electric light lines? What streets?

A. Various streets in Joplin and extended and added new lines to the poles already up.

Q. Well, what poles already up?

A. Well, the poles that were there.

150 Q. How do you know that the poles were standing there, and how do you know that the poles were extended?

A. Because I bought the wire and know that it was put up.

Q. What streets?

A. Some was put up when I wasn't there, and some was put up when I was there, we rebuilt the pole lines.

Q. Rebuilt them?

A. Yes, sir.

Q. What pole line did you rebuild?

A. Well we put a 55-foot pole line through that alley west of Main street, that line was built clean through with a fifty-foot pole line.

Q. When did you rebuild that?

A. That was built along,—that was built along right after this company got control of this property.

Q. I thought you said that was done after this invoice; I am talk-

ing about the improvements you made after the invoice, this was made March 20, 1897?

A. I don't know whether the pole line was put up before that invoice was made or afterwards, I couldn't tell without referring to my records but the company's vouchers show they had that much, show that that much money was paid out, actually expended.

Q. I know, but tell us where?

A. Well all over, the lines were extended and the system generally enlarged.

Q. Can't you give us more specific items then that?

A. Well there was a new substation built there.

Q. How much did that cost?

A. And new transformers, step-down transformers put in there.

Q. That was in the invoice, wasn't it?

A. No we put in the new ones.

151 Q. This substation, wasn't that built when you made this invoice?

A. No, sir, it was not.

Q. How much did that cost?

A. I don't know, I would have to refer to the books to find out exactly what that cost.

Q. You put some transformers in the substation?

A. Yes, sir.

Q. Where did you have the transformers before the substation was built?

A. They were in the small building that stood on the other part of the lot that is now vacant.

Q. So you took them out of that and moved them over to the substation?

A. We enlarged the substation as the business increased we increased our step-down transformers.

Q. How many transformers did you buy, and how much did they cost?

A. They were very expensive.

Q. How much did they cost apiece?

A. They cost I think, about,—I don't remember what size we have in there now, but probably cost from five to seven hundred and fifty dollars apiece.

Q. How many did you buy after this invoice was made?

A. I think we bought three or four.

Q. How many did you have before?

A. I think we had three, the other transformers were displaced and new ones put in in some instances.

Q. What did you do with the old ones that you took out?

A. They were shipped back to the factory, I guess.

Q. How much did you say those transformers cost?

A. They cost all the way from,—that depends on the size,—from five to seven hundred and fifty dollars.

152 Q. Did you have any of that kind of transformers before you built your substation?

A. Before we built the new substation?

Q. Yes?
A. Yes.
Q. They cost $500?
A. Well I don't remember what the transformers cost before we built the new substation as they were bought under one general proposition for a very large dynamo that we put in there, it was embodied in one general proposition, I don't remember what the different items cost.
Q. Here is a list of transformers, I see the price for them is $270?
A. Let me see the list? (Witness examines list.) These are transformers used on the outside.
Q. Did you buy any new transformers in Webb City after this invoice?
A. The company is buying new transformers all the time.
Q. There is none of these transformers that this ninety thousand dollars was expended for that are in Texas or Mexico, that were put down in Texas or any other State outside of Missouri, is there?
A. No, sir, the company don't own any property in Texas.
Q. Are you sure it was all in Missouri?
A. Yes, sir.
Q. Now you stated in your answer to a question put by Mr. Eaton that all this work was done was done under ordinance 441, all these improvements were made under that ordinance, what did you mean by that?
A. I meant that we were doing business in Joplin under that franchise, and naturally would be doing what we put in there,—our property extensions, would be under whatever rights we had under that ordinance.
Q. You don't mean to say that all your plant that was
153 built outside of the city was done under that ordinance?
A. I don't understand that the city had anything to do with it.
Q. You don't mean to be understood that the improvements put in at Webb City was under this ordinance?
A. There wasn't any improvements at Webb City at that time.
Q. The pole line for supplying Webb City wasn't put in under that ordinance was it?
A. It was only what we did in Joplin that was put in under that ordinance; whatever our demands on our service were in Joplin we put in under that ordinance.
Q. When Mr. Eaton asked you this sweeping question if all the improvements that were made under ordinance 441, you meant to say that all of the plant that was put in at Joplin for the purpose of furnishing lights was done under this ordinance?
A. Whatever our general business demands were was put in under that ordinance.
Q. So you built your plant at the Falls, under that ordinance did you?
A. Our plant at the Falls, of course was built to supply service under that ordinance, yes sir.

Q. And the city ordinances of Joplin extend out of the city, out of Jasper county, do they?

By Mr. EATON: I object to that as being a question of law and not a question of fact.

Q. In what way did you build the plant outside of Joplin, and outside of Jasper county under ordinance No. 441?

A. In what way?

Q. Yes.

A. Well, if you have got an ordinance to furnish light in Joplin, to furnish them light, and you build your power plant down at the Falls, or any other part outside of the city, you would naturally build your system in harmony with that.

154 Q. Well this dam was constructed before you bought ordinance 441?

A. I am referring to the new improvements that were made.

Q. Then you don't mean to be understood to say that this dam was built under ordinance number 441?

A. Well, the dam was built under whatever ordinances that they were doing business under at that time.

Q. You acquired this franchise by this deed of June the 9th, 1896? and prior to that time your company had a plant at Grand Falls did it not?

A. Didn't have any plant there prior to the time we bought it, the Southwest Missouri Light Company didn't.

Q. Didn't the Southwest Missouri Light Company have a plant at Grand Falls prior to June, 1896?

A. They had no plant prior to the time they bought it at the foreclosure sale.

Q. Didn't you have that plant before you bought the Freeman plant?

A. Yes we had a plant, the Southwest Missouri Light Company was operating in Joplin before we bought the Freeman plant.

Q. Then before you bought the Freeman plant you had an extensive plant at Grand Falls in Newton county?

A. There was a plant there.

Q. Well, you had the dam there the same as it is now did you not?

A. I don't know whether it was the same as it is now or not.

Q. Well, outside of perhaps a board being put on top of it it is the same as it was before you bought the Freeman plant, is it not?

A. I couldn't say about that, several changes down there.

Q. You had an auxiliary steam plant down there before you bought the Freeman plant?

A. Yes, sir.

Q. Then as a matter of fact you had, before you bought this Freeman franchise, the Southwest Missouri Light Company was claiming to operate under another franchise, and was generating its electricity at Grand Falls, and had all of this plant and power and property down there, except the new steam plant that was

155 built, and the change in the water wheels, and possibly some changes in the machinery?

A. A good many changes made.
Q. Well, outside of changes in the machinery?
A. Well, machinery, extensive changes made.
Q. Well, was there any new buildings built?
A. New buildings?
Q. Yes?
A. I have already stated that we put up two or three new buildings.
Q. What new buildings did you put up?
A. At the Falls?
Q. Yes?
A. We put up a new steam plant at the Falls.
Q. I say outside of the steam plant, what other buildings did you build since the purchase of the Freeman franchise at the Falls outside of this steam plant, what other buildings did you construct since then?
A. Well since the time we purchased the Freeman plant, we put up a brand-new steam plant.
Q. Well I say you built a new steam plant, what else?
A. We built up new water wheels, and everything in connection with them, very great improvements.
Q. You changed the water wheels, and put in a new steam plant?
A. Put in vast improvements there.
Q. Outside of that you built no other improvements at the Falls?
A. Well it wasn't necessary to build any more.
Q. Now Mr. Myers I didn't ask you about the necessity, I asked you did you build it?
A. We built just exactly what I *ahve* stated.
Q. Then before that you had an extensive plant at the Falls for generating electricity by water power before the purchase of the Freeman franchise?
A. We had just what I have stated.
156 Q. Did you have and water-power plant there before you bought the Freeman franchise?
A. Yes, sir.
Q. You had your dam there before you bought the Freeman franchise?
A. Yes, sir.
Q. You had all the buildings there except this last steam plant?
A. Yes, sir we had the buildings there.
Q. All that property was built before you acquired this Freeman franchise?
A. The building was there.
Q. Was all that property acquired before you bought the Freeman franchise?
A. What, the property we had at the Falls?
Q. Yes, besides this steam plant?
A. There were other buildings.
Q. You had quite an extensive plant there before you acquired Freeman's franchise did you not?

A. We had an extensive plant for the demands at that time, yes, sir.

Q. You have made no changes in the dam since you bought the Freeman franchise?

A. We have made very important changes in the water wheels as I have already stated.

Q. I asked you about the dam not about the water wheels?

A. Well, that is part of the dam.

Q. What changes have you made in the dam since you bought the Freeman franchise?

A. Put in new water wheels in connection with it.

Q. Well, any other changes?

A. I don't know whether we raised the dam any or not, my recollection is that we did.

Q. Well, if you raised it, you raised it by putting boards on top of it, planks on top of it?

157 A. No, I think we put on stones.

Q. Do you mean that you raised the dam up and added stone-work?

A. I think we did on one side.

Q. How extensive was that?

A. I think on one side we raised it several feet.

Q. On which side?

A. On the opposite side from the power plant.

Q. On the east side of the creek?

A. Yes that's on the east side.

Q. Then you are testifying that after June 9th, 1896, that you built two feet on the dam on the east side of the creek?

A. We raised it, I don't know how much.

Q. You added stone, you raised it by the addition of stone-work on the east side of the creek?

A. We raised it over there, then we also put on,—well we raised it on the east side, yes, that is my recollection.

Q. How high did you raise it Mr. Myers?

A. I think we raised it a couple of feet on the extreme east end of it.

Q. How far from the bank?

A. Probably 100 feet from the bank.

Q. From the bank west for 100 feet, on the west side you added about two feet high of additional dam by stone-work?

A. Then we raised the balance of it by framework.

Q. That is the addition to the dam that has been done since June the 9th, 1896?

A. Yes, sir.

Q. You are sure of that, are you?

A. That is my best recollection.

Q. Then you built this additional steam plant, and you took and put in new water wheels, now what other changes have you made since that?

158 A. We put in a new line of shafting down there over 100 feet long.

Q. A new line of shafting?
A. Yes, sir.
Q. What other changes?
A. O, we have made a number of changes there in the way of additional machinery, put in new dynamos.
Q. What new dynamos?
A. Put in six 6000 thousand-light incandescent machine.
Q. What other changes?
A. We put in I think two new arc-light machines.
Q. When did you put them in?
A. They have been put in since 1896.
Q. Well, when since 1896, about when, '97, '98 or '99?
—. It must have been pretty close to '96, I don't remember the date.
Q. Do you know they were put in in 1896?
A. Some were put in soon and some later; we put them in there.
Q. Were they put in since June, 1896?
A. Some of them were, yes, sir.
Q. Were all of them?
A. I don't know positively whether all were put in since June 1896 or not.
Q. You don't know whether they have been or not?
A. I know at least two of them have.
Q. You don't know how many?
A. At least two of them have.
Q. Is that all the changes you think of since June 1896?
A. Well there was a vast number of changes made there that I don't call to memory now.

Redirect examination by Mr. EATON:

Q. A letter has been produced which you say you wrote to Mr. Squire in reference to remedying some complaints in regard to the service with reference to the city lighting; that letter refers, does it not, to lights furnished the city?
A. Yes, sir.
159 Q. Did you thereafter take steps to remedy the complaints that were made?

By Mr. MONTGOMERY: I object because that is leading.

Q. Did you afterwards take any steps towards remedying the defects of which they complained?

By Mr. MONTGOMERY: I object to that question because it is leading.

A. I took immediate steps, yes, sir.
Q. Do you remember what was needed in connection with the matter about which that letter was written?
A. I think that is about the time the water-wheel accident happened.
Q. Was your company at all times ready to remedy any defects of which the city complained in regard to the city lighting?

By Mr. MONTGOMERY: I object to that because it is leading, and asks for a conclusion, and calls for nothing which would be testimony-in-chief.

A. Yes, sir.

Q. A letter has been referred to from Mr. Parsons in regard to extending the contract for a further period of time after the four months had expired, and also a report as to such extension has been referred to; you have seen this letter and report; did your company refuse to make such extension?

By Mr. MONTGOMERY: I object to that because it is leading and —.

A. I understand this letter was in regard to four months' extension?

Q. No, it is to make a further extension after the four months.

A. No, sir, we never refused to furnish them any service they wanted.

Q. Your first four months' extension was to cover the period when the city thought it would be able to do the city lighting?

A. Yes, sir.

160 Q. I understand you that after that your company did not refuse, but these negotiations and letters referred to in this report were in regard to that extension?

By Mr. MONTGOMERY: I object to that because it is leading and suggestive, and an argument in the case.

A. Yes, I so understand it.

Q. You so understand it?

A. Yes, sir.

By Mr. MONTGOMERY: I object to that because it is leading and suggestive.

Q. I notice in this inventory that the value of this lot which you say is a fifty-foot lot is put at one thousand dollars; do you know whether that is its value at this time, or was its value at the time this inventory was made?

A. Why my idea was to put a very low value on all the company's property, and I should judge at this time the lot is worth probably five thousand dollars.

By Mr. MONTGOMERY: I object to the question and answer because it is argumentative, and tends to disprove previous testimony given by the witness.

Q. Has the complainant company been a tax-payer in the city of Joplin during the years since its orginization and conduct of the business, and having this property in the city?

A. Yes, sir.

Q. The city has continued to tax its property has it not?

A. Yes, sir.

Q. Were any objections ever made to you by the city because the light at the Freeman foundry was not kept burning or run free, have any such objections ever come to you?

A. No, sir.

Q. Do you know of the fact Mr. Myers that shortly prior to the acquiring of the Merchants' Electric Light & Motor Company property by this complainant that the city through its officers
161 ordered that light placed out in the street, and placed upon poles,—arranged with the Merchants' Company, bought the poles and the Merchants' Company did the work to put it up, and they absolutely changed the light from the Freeman's porch and put it into the street; do you remember of the fact, do you know of that fact?

A. No, sir.

Q. Was there ever any refusal on the part of the complainant company to furnish free light on Feeeman's porch during the time you were general manager?

A. No, sir, the company never refused to perform any part of its contract.

Q. And you say your attention was never called to any violation of that part of the agreement?

A. No, sir.

Q. At the time that these negotiations were going on with reference to extending the contract for the city lights did the board of managers signing this report, whom I understand had in charge the erection of the city plant, or any of the city officers inform you or tell you that they proposed to do commercial lighting in competition with your company?

A. Yes, sir.

Q. They did?

A. Yes, sir.

Q. When did you get that information?

A. I got that information from an interview I had with the light committee.

Q. When was it?

A. It was a meeting I had with the committee in Joplin some time after they voted the bonds, we had a meeting down there one day.

Q. Did you object to it and protest about it.

A. Yes, I not only objected, but tried to show them where it would be a bad investment for the city, also said to them, at the same time, I remember very distinctly saying to them that we would like to furnish their power to run their lights at what their coal cost them. I made that proposition to them.

162 Q. Then I understand that this complainant company was objecting to the city company going into the commercial lighting business?

A. Yes, sir and at the same time I said to them that we would furnish them with power to run the street light at whatever the cost of coal would be at their station, not saying anything about the other enormous expense of machinery, employees etc.

Q. They were, however, determined to have the city plant were they, and went on with their construetion?

A. Yes, they said they could furnish service much cheaper than we could, although we had water power.

Q. Was there some hostility on the part of this committee towards this complainant company manifested when you were there?

A. Well a part of the committee seemed to be prejudiced without any reason. I thought without any reason.

Q. They didn't assign any reason, did they?

A. The only reason they assigned to me was they thought they could furnish service cheaper than we could; I tried to convince them that they couldn't; I told them we would furnish power to furnish their lights for the actual cost of the coal, and the company could make money by it.

Q. Was there anything said in that meeting about your going ahead and supplying additional improvements, and supplying additional power?

A. I explained that we were making big improvements at the Falls and in all our general system.

Q. That was shortly after the voting of the bonds?

A. Yes, sir.

Recross-examination by Mr. MONTGOMERY:

Q. Then this interview, as I understand you Mr. Myers was shortly after the voting of the bonds, and before they had entered upon the construction of the city plant, and you went to them
163 with the view that on account of having the water power that you thought you could obviate the necessity of their building a plant, that you could furnish the power for their street plant at less cost, at the same price they could burn coal?

A. Yes, I went to them with the best kind of motive and tried to point out where the investment would not be a good one for the city, and I made the statement to them that we could furnish them the power, and would be glad to do it to run their street lights at what their coal would cost.

Q. They thought if they run commercial lighting in connection with the street lighting they could do better?

A. They thought with the information that they had they could do a commercial business, they stated to me they thought they could do a commercial business, and make enough out of the commercial business to pay for the street lights.

Q. So if they did that they thought it was a better proposition then your proposition to furnish power for the cost of the coal?

A. Well, I realized the fact that they were inexperienced in the business, and I tried to keep them clear from building a plant that I knew positively and absolutely sure would be a losing game so far as the city was concerned.

Q. Then you thought that as to commercial lighting, not being experienced they would run it at a loss; that was your view, that was the argument you presented to them?

A. Yes, sir.

Q. You say that some of them seemed to be hostile and persisted in building their plant and running it?

A. They were going to do commercial lighting and make enough to run the city lights.

Q. Do you remember how long it was after the voting of the
164 bonds that you had this talk?

A. Very shortly afterwards, my recollection is now, it was inside of a week, the bonds had not been sold when I had the interview with them.

Q. That was your proposition to go to them with this proposition and after seeing that proposition they would abandon the city lighting and make this arrangement with you?

A. My purpose was to show them where they were making a mistake.

Q. Your experience then was that individuals who were not in the lighting business couldn't do business like those who had had long experience.

A. I didn't think that the city, having granted us a franchise, and we having expended a large amount of money, was acting in good faith with us, we having expended over three hundred thousand dollars in the electric light business,—in the early days of the lighting business it was very expensive, and I didn't think it was in good faith for the city to attempt to go into the commercial lighting business; I didn't object to their lighting their streets, they had a perfect right to do it, at the same time I thought we could save them money there, which was a fact, which the company can do right now,—can make more money out of it than we made when we had the original contract.

Q. There was some members of the committee seemed to be hostile and persisted in doing a commercial lighting business in the face of your protests?

A. They determined that they knew more about the electric lighting business than I did.

Q. What did you tell them about doing commercial lighting,—
you told them you objected to them doing commercial light-
165 ing but you told them you were willing they should build a plant to do the street lighting?

A. I told them I thought they had a perfect right to light the streets in any manner they saw fit, but I didn't think it was acting in good faith to our company to attempt to compete with us.

Q. Which one of the committee was it made this argument to you that they could make enough out of the commercial lighting to pay the expenses of lighting the streets?

A. Mr. Wadleigh, I think.

Q. What did Fillmore say?

A. I understood Fillmore from his talk was very dubious about the city's ability to accomplish what they started out to do.

Q. He was rather opposed to the building of the plant, didn't he tell you in the first place that he was rather averse to the building of the plant?

A. I think he told me that the city did not intend to go into the commercial lighting business.

Q. Didn't Fillmore tell you that the reason they did this was because you folks didn't give them good service?

A. No—sir we were making big preparations.

Q. You had been making these preparations for three years?

A. No, sir we gave them very fine service down there, very cheap service.

Q. Isn't it a fact from the time in September when you discontinued the Freeman service that there — continuous complaints?

A. The best evidence of that is just to take the present service and compare it with what we gave them, and anybody will say that our service double discounted them.

166 Q. Why was it that they cut down your bills from that time on, what was the reason that they refused to allow your bills?

A. Some fellow would come in and say the light was out at this place, and it was cheaper for us to suffer these deductions than to go into a lawsuit about it.

Q. Lights were out all over the city sometimes?

Q. Arc lights are peculiar things, they may be out for half an hour when the company is not at fault, that happens in every electric light plant in the world.

Q. That is caused by lightning?

A. No, sir it is caused by various things, the carbon may be a little hard and not fit the lamp, and may not work properly, the wind may blow the carbons so they won't touch each other properly.

Q. But — don't know anything about Mr. McDonald then in 1896 and '97 turning off all the lights of the city when the company didn't have sufficient power?

A. I know one time we had an accident to our water wheel; of course every company meets with accidents, the wires get crossed up, storms will cross the wires.

Q. You turned off the city light plant whenever you got short of power?

A. No, sir sometimes you turn off the light when the wires were interrupted by storms, but we always tried to give the city light if we had an interruption anywhere and it was possible at all to give the city light we always did it to the disadvantage of somebody else.

Q. Your bills, nearly every month, from September 1896, to September, 1899, you had trouble with the city collecting them?

A. No, sir I don't think the records will show that at all.

Q. Well it was nearly every month, wasn't it?

A. No, sir, it was not.

Redirect examination by Mr. EATON:

167 Q. Mr. Myers, what effect upon the complainant company and its property would the doing of commercial lighting by the city,—that is how would it effect the property and interests of the company, the complainant company, if the city did commercial lighting?

By Mr. MONTGOMERY: I object to that because it calls for the conclusion of the witness, simply calls for the opinion of the witness, as to what might happen in the future, and is a subject about which

the witness could have no better information than the court who will try this case.

A. It would have the effect of greatly depreciating the value of the property of the Southwest Missouri Light Company from the fact that the rates which they proposed to make are such that the service cannot be maintained for that, and the city would have to get money from some other source, tax the people from some other source to run this plant, and it would not be a question whether they were making any money or not from one channel as it could not be definitely known, they would be taxing the people in another direction.

Q. The city, as I understand you, can conduct a competitive business at a loss, and tax the people for the loss?

A. By transfer-ing money from one channel to another.

By Mr. MONTGOMERY: I object to all this because it all calls for sup-ositions, and possible matters about which the court has as much information as the witness.

A. (continued). There is no supposition about that, that is a well-known hard fact.

Q. Is the competition that would be carried on between the city operating as it does for public purposes, or operating under the authority of the public, differ from competition that might be introduced by an independent company?

A. Yes, sir.

Q. In what respect is it different?

A. In this respect, that the city can tax the people to get
168 money to run this plant from other sources, and in many cases it is very difficult for the tax-payers to know what the service is really costing the city.

By Mr. MONTGOMERY: I object to the above question and answer, for the reason that simply gives an argument and not any facts within the knowledge of the witness.

Q. You have had experience in conducting electric lights at other places in Joplin have you not?

A. Yes, sir, lots of experience.

Q. Have you had experience in matters of competition?

A. Yes, sir.

Q. Have you had experience in localities where lights are conducted, and are the answers that you have given to previous questions based upon your knowledge?

A. Yes, sir.

By Mr. MONTGOMERY: I object to all these questions because they are leading and suggestive.

A. (continues). It is a well-known fact; you take it in the State of Massachusetts, and the only State I think of in the United States in which they have to make absolute reports of municipal lighting, and you will find there that the cities running lighting plants, as shown

by the report of the commissioners, shows that the street lights cost them from thirty to forty per cent., and sometimes a hundred per cent. more than they could get the same service from private companies.

By Mr. MONTGOMERY: I object to that answer because he is stating from some report from somebody, which is hearsay.

Recross examination by Mr. MONTGOMERY:

Q. You have had a good deal of experience, Mr. Myers in running a municipal plant have you not?

A. I am a very careful observer, and I know of one instance
169 in particular where we are tax-payers where there is an electric municipal plant being run very close to Joplin in which the city is running it at an enormous loss.

Q. Was you ever a councilman of a city, or a member of the board to run a municipal plant?

A. Well no, I never have been.

Q. Was you ever the assessor or collector of a city?

A. No, but I have been a tax-payer and helped to pay the bills.

Q. You don't know anything about the machinery from actual experience of the collection of taxes, or the payment of them upon these light plants?

A. O, yes, I am familiar with that.

Q. Suppose the city should make enough money from its commercial lighting to do its street lighting without taxing the property-owners?

A. That is impossible.

Q. I say, suppose that is true, if that is a correct supposition it would be a fact wouldn't it?

A. If you suppose the impossible, I don't think that would be true.

A. You can't tell anything about how they are going to run this plant, can you?

A. Yes, sir, I can. I can go to Joplin and tell within fifty dollars a month what it is costing to run that plant in six hours.

Q. Well, I say, but if they do commercial lighting?

A. Yes, I can tell exactly because I know their rates, I can tell exactly how much they are going to lose and all about it.

Q. Where is the rate too low that they established for doing commercial lighting; do you know what rates they established?

A. I know what rates they told me they were going to establish.

Q. Do you know what rates they did establish?

170 A. I don't know that they have established any general rate.

Q. You don't know that they have established a public rate for public lighting do you?

A. At Joplin?

Q. Yes?

A. Yes, I think I saw the rate down there that they published.

Q. Why did you state that you don't know if you do know?

A. Well, I say that I know from what they told me what their rates were going to be, I think there was a published tariff.

Q. How did the published tariff compare with what they told you?

A. They would run at a loss.

Q. What rate did they establish for 12-o'clock arc lights?

A. I think it was twenty-five cents.

Q. I am asking you about 12-o'clock arc lights, what rate did they establish?

A. I don't remember now, it has been some time since I looked at it.

Q. What rate did they establish for all-night arc lights?

A. I don't remember what they were now.

Q. What rate did they establish for sixteen-candle power, midnight service?

A. I think that was twenty-five cents.

Q. Are you sure of that?

A. I am pretty sure of that.

Q. If you didn't see the list you wouldn't know would you? Do you say that is the rate they did establish?

A. No, I don't know positively, because I only remember what I saw in the newspapers, because I wasn't with the company when they started the plant.

Q. Then you don't know what rate they did establish?

A. No, I don't know positively what rate they did establish. I know what they told me.

Q. You think that would be a ruinously low rate?

A. I know it.

171 Q. Suppose they establish a seventy-five-cent or a dollar rate for all night?

A. Well they would establish it right.

Q. What rate does your company make for all-night sixteen-candle-power light?

A. I think we have a minimum rate for so many lights.

Q. Well one light I am talking about, sixteen-candle power all night, what was your rate?

A. I don't think,—let's see, it was a dollar and a half wasn't it?

Q. Then you don't know, you have to ask somebody else to get your own rates; how does it come that you come here and pretend to know that the city is going to lose money, and you don't even know the rates of your own company?

A. Because I know that the rates they told me they were going to establish they would lose money.

Q. What was the rate of your company for a 32-candle power midnight?

A. I think that would be a dollar.

Q. Are you sure of that?

A. Yes, sir.

Q. What is your rate for 10-o'clock incandescent?

A. We have no ten-o'clock rate.

Q. Well 12-o'clock incandescent?

A. Fifty cents.
Q. Now suppose the city charges seventy-five cents, would that be too high or too low?
A. Well, if they would charge seventy-five cents, nobody would do any business with them.
Q. Don't you know that they did establish a rate and publish it in the paper and file it with the council?
A. I know that they told me what their rates would be.
Q. That's all you do know?
A. What they told me they were going to do.

Q. What was the custom of your company, or rules regard-
172 ing people taking lights, did you require them to enter into a contract for a year or not?

A. That is the custom of the company, to have contracts with all its patrons, that was the instructions to the superintendent.
Q. At all times?
A. O, yes, take contracts.
Q. From the time of the Freeman franchise in June 1896,
A. I know I had a lot of contracts printed.
Q. Down to the time you quit the company?
A. At the time the Freeman plant,—at the time I went in down there, I think I had five thousand contracts printed and sent down there.
Q. Was that your instructions to your superintendents?
A. Yes, sir, that was the instructions to the superintendents.
Q. To require a contract of all those people that took lights?
A. To take yearly contracts, yes, sir.
Q. Was there anything in the Freeman contract authorizing you to do that?
—. I don't remember whether there was or not.

GEO. M. MYERS.

Subscribed and sworn to before me this 22nd day of Jan. 1901.

DARIUS A. BROWN,
Special Examiner.

H. M. WHITEHEAD, JR., a witness called on behalf of the complainant herein, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

Direct examination by Mr. EATON:

Q. Mr. Whitehead give the commissioner your name?
A. H. M. Whitehead, Jr.
Q. Where do you reside, Mr. Whitehead?
A. Joplin.

Q. Are you connected in any way with the complainant,
173 The Southwest Missouri Light Company?

A. Yes, sir.
Q. What is your official position?
A. Superintendent.
Q. As such superintendent, what are your duties?

A. To look after the superintending of the company's interests in the city of Joplin, Webb City, Carterville, and Grand Falls.

Q. Are the books and accounts kept under your supervision and in your office?

A. One portion of them, of the books and accounts are kept in the office, one portion of them are directly under my supervision, and the other portion are under Mr. Hodkin's.

Q. What is Mr. Hodkin's position?

A. Our cashier.

Q. How long have you been superintendent, Mr. Whitehead?

A. Since the 10th of October.

Q. 1900?

A. 1900.

Q. Let's see your predecessor was Mr. Weare Parsons?

A. Mr. Weare Parsons, yes, sir.

Q. Where is he now?

A. Keokuk, Iowa.

Q. During the time you have been superintendent have you become familiar with the nature, character, and location of the company's property?

A. To a certain extent, yes, sir.

Q. Do you know the character of the property at Grand Falls, known as the power plant?

A. Yes, sir.

Q. What are the dimensions of the power-plant building?

By Mr. MONTGOMERY: I object to that for the reason that it is irrelevant and immaterial, and tends to prove no issue in the case, and refers to property outside of the city of Joplin and outside of Jasper county.

A. Our boiler-room there, new boiler-room, is about fifty feet by forty; our dynamo and engine room, new part is about fifty
174 feet by fifty; then there is a section of old stone building about forty-five feet long and about thirty feet wide.

Q. Is it a substantial permanent structure?

By Mr. MONTGOMERY: I object to that because it is irrelevant and immaterial and refers to property outside of the city of Joplin and outside of Jasper county.

A. It is all built of brick and stone except the roof.

Q. What is the roof built of?

A. It is a gravel, tar roof.

Q. The whole plant is equipped, is it not, Mr. Whitehead, for using the water power and steam power, either connected or separate, is it not?

By Mr. MONTGOMERY: I object to that because it is irrelevant and immaterial and tends to prove no issue in this case.

A. The plant is connected so that it can be run either by steam or water or both together; we can use part of our steam and part of our water, or any way we want to; all of our apparatus is up to

date; I guess it is the finest station in the State so far as the station is concerned, the equipment of it.

Q. Are you familiar with the lines of poles and wires that are within the city of Joplin?

A. Yes sir.

Q. Can you give us a general idea of where they are located and about the extent?

A. Yes sir, I can give it to you, some of it from memory and the rest of it I have got it all copied off here; the main line runs from the Falls I think on the county line or on some district line very nearly directly north to Twentieth street; east on Twentieth street to the first alley west of Main street; from there it runs to Fifth street north, then it goes one block to the second alley west of Main street and into our substation back of our office; that line has a set of OO wires and a set of O wires, and six arc circuits. We start from our substation and go north as far as, I think it is Third street, and then over to Pearl and out Pearl to the city limits, and from there right on through to Webb City. That line has four number four wires and two number six arc wires.

175 By Mr. MONTGOMERY: I object to any testimony as to the line running to Webb City for the reason that it tends to prove no issue in this case.

A. (continued). We have a lead going east from Broadway from first alley east, that is the first alley east of Main street to Eighth street, which is eight blocks; we have a lead going south from Broadway from Seventh street, two blocks.

Q. South on Seventh street?

A. Yes sir. We have a lead going south from Broadway on Seventh street, two blocks; lead going north from Fifth street in first alley east, that is first alley east of Main street. Well, now, there is a form that goes with this first alley; first alley east to A street, five blocks; lead going north from Fifth street and first alley west of Main street, to B street, six blocks; lead between first alley west and first alley east on First street, one block; do you want all of these, because there is an awful lot of them.

A. Yes, I would — to have you give a complete statement of the poles and wires in the city?

A. Lead between first alley west and first alley east on Fourth street, one block; lead between first alley west and first alley east on Fifth street, one block; lead between first alley west and first alley east on Seventh street, one block; lead between first alley west and first alley east on Ninth street, one block; lead between first alley west and first alley east,—no lead between first alley west and second alley west,—that would be the next alley west of the first alley,—on Second street, one block; lead going east on Fourth street from first alley east to Grand avenue, four blocks; lead going north and south from Fourth street in second alley east, two blocks; lead going north from Fourth street on Pennsylvania avenue to Second street, two blocks; lead going north on Grand avenue from Fourth street one and a half blocks; lead going west on Fifth street to the

eighth alley west—alley between Jackson and Amanda,—from
176 second alley west, six blocks; lead in alley between Jackson and Amanda going north from Fifth street to Second street, three blocks; lead going west from the Eighth alley west on Third street to Gray avenue two and one-half blocks; lead going north from Third street to B street, four blocks; lead going to West Town, five and one-half blocks; lead going south — Fifth street to Seventh street, in eighth alley west, two blocks; lead going north and south in seventh alley west, one block; lead going north from Fifth street in sixth alley west one and a half blocks; lead going north from Fifth street to Third street in fifth alley west, two blocks; lead going north from Fifth street in fourth alley west, one and one-half blocks; lead going south from Fifth street to Seventh street and fourth alley west, two blocks; lead going south from Fifth street in third alley west, one block; lead going north from Fifth street to Second street third alley west, two blocks; lead going south from Fifth street to Eighth street, second alley west, three blocks; lead going west on Eighth street from second alley west to Grand avenue, seven and one-half blocks; lead going south on Grand avenue to Eleventh street three blocks; lead going north in sixth alley west from Eighth street to Seventh street one block; lead going west on Seventh street from sixth alley west to seventh alley west, one block; lead going north from Eighth street, to Seventh street, in fifth alley west, one block; lead going north from Eighth street to Seventh street in fourth alley west, one block; lead going south from Eighth street in fifth alley west, one and one-half blocks; lead going south from Eighth street in third alley west, one block; lead going north from Eighth street to third alley west one block; lead going east from first alley west to Virginia avenue on Twelfth street, one and one-half blocks; lead going east on Thirteenth street, from first alley west to first alley east one block; lead going north and south in first alley east from Thirteenth street, one and one-half blocks; lead going west on Fourteenth street from first alley west to Wall street, one and a half blocks; lead going east on Fifteenth street from first alley west
177 to first alley east, one block; lead going east on Seventeenth street, from first alley west to Main, one-half block; lead going east on Nineteenth street from first alley west to Main, one-half block; lead going west on Second street to Wall to fifth alley west, two and one-half blocks; lead going north from Second street to A street, in fifth alley west, two blocks; lead going west on A street to fifth alley west to sixth alley west, one block; lead going south from A street in sixth alley west, one block; west alley lead going south from Fifth street to Nineteenth street, fourteen blocks; east alley lead going south from Fifteenth street to Tenth street, five blocks; lead in second alley west, going north from substation to Second street, two and one-half blocks; lead going on Wall street from Second street to B street, three blocks; makes a total, I think of one hundred and thirty blocks; now that is nothing but our incandescent primary lines, and nothing but the branches from our mains to our customers, it is none of our main lines whatever, but just

leads to our customers, and in regard to the territory covered there we have no requests for light that we have not filled, and we have completely covered the town from one end to the other, we are in a position and always will be to furnish light in all parts of city.

Q. What do you mean by a lead wire?

A. The lead that I spoke of is our primary that we will run suppose we will start from Main street and we want to go direct four or five blocks, I call that lead out, four or five blocks out.

Q. Now you have some main line of wires?

A. Our mains, yes sir, we have what we call our mains.

Q. In addition to these leads?

A. Those are our main leads coming into the town from the Falls; the arcs are not considered in here at all.

Q. Those wires are all supported on poles?

A. Yes, sir; the poles will run from thirty to fifty foot; I could inside of two days give you the exact number of poles we have in the whole city.

Q. Well, there are poles sufficient to support all these lines
178 of wires you have described?

A. Yes sir.

Q. Mr. Whitehead, have you caused to be prepared a list of consumers in the city of Joplin?

A. Yes sir.

Q. Who are light-takers from the complainant company?

A. Yes sir.

Q. (Hands witness paper.) I will ask you to state whether that is a complete and accurate list of takers of light or a list of your commercial consumers as it exists at this time?

A. Yes sir.

Q. Is it taken from the records and books in your office?

A. It is, yes sir.

By Mr. EATON: We offer this statement in evidence.

By Mr. MONTGOMERY: I would like to ask him a question or two about this list.

Q. Did you make this list yourself?

A. No sir.

Mr. MONTGOMERY: I object to it for the reason that——

Q. It, I understand, was made in your office under your supervision?

A. Yes sir.

Q. By whom was it made?

A. Mr. Nailor.

Q. Who is Mr. Nailor?

A. He is a clerk at our office.

Q. That is, it was written by him?

A. Yes sir, typewritten by him, it was copied by him from our customers' ledger.

Q. Copied on the typewriter?

A. Yes sir.

By Mr. EATON: I offer it with the additional explanation.

By Mr. MONTGOMERY: I object to it because it was not made by the witness, and is not an original paper or record entitled to verity.

Said list is in words and figures as follows:

Southwest Missouri Light Company.

List of Consumers at Joplin, Missouri, Compiled Dec. 11, 1900.

Name.	No.	Incandescent.	No. arc.
American Wringer Co	6	16 c. p.	
Albright, J. A. & Co	...	...	2
Abbott, Ella	18	16 c. p.	
Aldrich, Joe	8	16	
179 Baker, J. W	4	16	
Balsley, Dr. M. T	6	16	
Bank, First National	12	16	
Bastain, A. L	4	16	
Brandli's saloon	3	16	1
Bile's bakery	...	...	1
Brookshire, Dr. H. C	4	16	
Blende hotel	15	16	1
	28	8	
Blackwell, A. T	8	16	2
Broadway barn	6	16	
Buckeye house	9	16	
Brandli, Wm	12	16	
Mitzell Bros	2	16	
Burgauer, D	...	...	1
Broadley & Patterson	7	16	
Brown, Alice	9	16	
Woodworth, H. G	2	16	
Keystone bar	41	16	
Burgess, W. L	6	16	
Berry, Dr. W. F	3	16	
Singer Mfg. Co	3	16	
Bomberger & Streedy	...	...	1
Barr, E. P	1	16	
Blockbarger, E. H	5	16	
Barr & Son	...	...	2
Campbell Bros	2	16	
Clarketon hotel	217	17	
Cooper Drug Co	7	4	2
	24	8	
Carson, A. W	3	16	
Crescent hotel	12	8	
	15	16	
Clark, W. A	4	16	
Christman & Bliedung	18	...	5

	Name.	No.	Incandescent.	No. arc.
	Church Bros	44	8	
	Collins, D	10	16	
180	Club theatre	264	16	3
	Chicago Shoe Co	...	...	2
	Witmer, Obe	24	16	
	Craycroft, Clark	8		
	Cowan, J. L	8	16	
	Sixth Street bar	1	16	2
	Corra, A. B	2	16	
	Joplin Club	31	16	
	Cox, John C	16	16	
	Fulton market	...	...	2
	Cunningham, Maude	7	16	
	Campbell bldg	2	16	
	Chicago Dental Co	1	16	
	City drug store	4	16	1
	Crossman, H. B	22	16	
	Dangerfield, J. H	6	16	
	Davis Bros	3	16	1
	Johns & Co	6	16	
	Dehm, Frank	...	...	1
	Dennis, I. M	6	16	
	Dufflemeyer, F	2	16	
	Donnehoo, J. J	6	16	
		15	8	
	Dennis & Whittell	7	16	
	Duke, J. H. & Co	6	16	
	Dewey bar	10	16	1
	Porter, Griffith & Co	7	16	
	Davis & Kaysir	9	16	5
		34	4	
	Dougherty, H. D	11	16	
	Dormadieu, Mme	11	16	
	Davenport, Crystal	11	16	
	Donnehoo bldg	10	16	
	Elks lodge	100	16	
	Wagner, B. E	3	16	
	English Supply Co	6	16	
	Economy Supply Co	10	16	
181	Eleventh Hour bar	...	...	2
	Famous, The	314	8	5
	Ferguson, James	2	16	
	Fillmore, L. A	11	16	
	Finch, T. H	13	16	
	Foreman, E. F	9	16	
	Gaddis, B. W	4	16	
	George, Jno	2	16	
	Golden Eagle	3	16	4
	Goldstein & Co	...	...	2

Name.	No.	Incandescent.	No. arc.
Goodwin, C. B.	3	16	
Garrison, A. M.	15	16	
Gross, Miles	...	...	3
Guengerich, Chris	1	16	
Globe Publishing Co.	15	16	
Gillett & Lighliter	2	16	
George, Walter	8	16	
Ayers, W. E.	8	16	
Hasshouse	4	16	
Haliard, W. B.	8	16	
Hub Clothing Co.	67	8	4
Harutun, Dr. M. B.	3	16	
Harper, Robert	3	16	
Haughton, A.	10	16	
Harlan, J. P. W.	10	16	
Heathwood, T. A	4	16	
Henley, A. J.	13	16	
News-Harrold Publishing Co.	46	16	
Howard, Belle	5	16	
Horton, W. J.	3	16	
House of Lords bar	104	8	
	1	16	
Hurwitz & Son	3	16	2
Hotel Burnette	30		
Hastings building	3	16	
Hotel Forney	1	16	
182 Hotel Pacific	8	16	
Herman café	3	16	3
Hamilton, Lucia	...	...	5
Hohman, F.	15	16	
Gotthelf & Hurwitz	...	...	3
Halyard Hardware Co.	11	16	
Hardy, T. S.	4	16	
Cottage house	4	16	
Hopkins & Woodruff	...	...	1
House of Lords restaurant	1	16	2
Illinois Zinc Co.	2	16	
Inger, P. W.	8	16	
Imperial restaurant	4	16	
Davison Bros.	6	16	
Jacobson, M. M.	6	16	
Jones, J. W	...	...	1
Joplin Hardware Co.	2	16	3
Joplin Und., Emb. Co.	7	16	
Joplin Furniture Co.	...	...	1
Johnson's restaurant	...	...	4
Joplin Grocery Co.	...	...	1
Mourning, L.	4	16	
Kelso, Ben	2	16	

	Name.	No.	Incandescent.	No. arc.
	King, J. W	...	...	4
	Kash, B. M	...	...	1
	Kirkpatrick, J. J	...	...	1
	Korhammer, W. M	36	16	7
	Kansas City & Southern R'y, com'l agt	4	16	
	J. F. Gill	3	16	
	Keiths, H. N	9	16	
	Kinchloe, Dr. M. B	12	16	
	Lawder, F. W	5	16	1
	Leonard Drug Co	34	4	1
		3	16	
	Hotel Windsor	22	16	
183	Long, Dr. J. E	23	16	
	Lichliter, N. B	13	16	
	La Compte & Branham	4	16	
	Leonard M. & R. Co	12	16	
	Latour, L	2	16	
	Laverty, Wm	1	16	
	Leonard's stable	17	16	
	Lacox, H. D	10	16	
	Leonard, J. M	15	16	
	Mackey house	4	16	
	MacAdams, J. M	10	16	
	Mo. & Kas. Ass'n	5	16	
	Hull, A. H	6	16	
	Marquis, Paul	...	...	2
	Model market	4	16	
	Mason, A. P	4	16	
	McConnell Tailoring Co	...	...	1
	M. & H. Zinc Co	4	16	
	Manhattan bar	4	16	
	Mills, A. L	4	16	1
	McConnell, A. B	25	16	
	Moore, Lee	12	16	
	Woodbine saloon	3	16	4
	Madeira, J. E	1	16	
	Myers & Foreman	10	16	
	Mears, W. F	5	16	
	McIntire, J. W	14	16	
	McCurdy, J. B	7	16	
	McPherson & Co	6	16	
	J. W. Byrnes Belting Co	8	16	
	Model Grocery Co	4	16	
	Morgan, W. E	15	16	
	Miller Bros. & Co	1	16	
	Metropolitan Ins. Co	2	16	
184	Martz Bros	...	...	1
	Michaelis, A. C	4	16	
	Morgan Paint Co	...	...	1

	Name.	No.	Incandescent.	No. arc.
	Miners' Hardware Co	...	...	2
	Model bar	2	16	1
	Caterbury Bros	7	16	
	Midland barber shop	16	16	
	Marquis chop-house	...	...	2
	Newlon & Son	3	16	
	Newirth, H	3	16	3
	Newman Bros	244	4	6
		124	16	
	Ogden, J. W	2	16	
	Osterloh, T. W	...	...	2
	O'Brien, J. A	356	4	3
	Pearl Grocery Co	20	4	2
	Packer, H. G	6	16	
	Phenice hotel	1	16	
	Poole, C. S	...	...	2
	Palace stables	29	16	
	Parker, M. C	4	16	
	Palace Drug Co	13	16	
		16	4	
	R'y K. C. F. S. & M	16	16	
	R'y K. C. & Southern	30	16	1
	R'y Missouri Pacific	19	16	
	R'y St. L. & S. F	20	16	3
	Reinheimer, L	26	16	
	Rohrer, C. H	17	16	
	Ornduff & Bro	3	16	1
	Ritter, Mabel	3	16	
	Runner, James	4	16	
	Robertson, J	8	16	3
	Harris, E	21	16	1
	Rosborough, O	2	16	1
	Reynolds, N. A	11	16	
185	Reis, A. T	...	...	3
	Hotel bar	...	...	1
	Scott, Walter	...	...	1
	Sherl, A. & M	25	16	4
	Shirey, F. M	50	16	
	Sheaut, C. E	2	16	
	Shafer & Co	...	...	1
	Sadler, L. C	9	16	
	Smith, Mrs. C. C	8	16	
	Sappington, Dora	8	16	
	Steinbach, Chris	4	16	
	South Joplin Drug Co	5	16	
	Sorg Sisters	5	16	
	Steinbach, Chris	8	16	
	Superior Gro. Co	8	16	
	Sensation saloon	9	16	1

	Name.	No.	Incandescent.	No. arc.
	Senate saloon	3	16	1
	Southern saloon	9	16	
	Saddlerock restaurant	...	...	1
	Shepard, L. W	19	16	
	Sellers Shoe Co	...	...	2
	Solomon, M	...	...	1
	Claycomb & Taylor	4	16	
	Stewart Bros	2	16	
	Shirey, F. M	25	16	
	Stewart, J. H	11	16	
	Shepard & Foster	...	...	3
	Taylor, Lee	2	16	
	Temple, Geo. B	...	...	9
	Lee, J. F	10	16	
	Miners' Exchange bar	24	16	
	Taylor, J. H	1	16	
	Brighton, I. E	9	16	
	Watkins Coal Co	2	16	
186	Wear, B	7	16	
	Weiler, M	12	16	3
	Wyman, Henry	30	16	
	Webster, E	2	16	
	Wolsey & Lenairs	2	16	
	Wayland, Joe	46	8	2
		15	4	
	White, W. W	3	16	
	Weaver, Dr. P. S	4	16	
	Westerhide, C	5	16	
	W. U. Telegraph Co	9	16	
	Wheeler & Leffen	1	16	3
	White, W. V	27	16	
	Webster, D	5	16	
	Wise, Jno	42	16	
	Walsh Lumber Co	4	16	
	Mrs. Chas. Wilson	3	16	
	Worth, Jas. H	11	16	
	Williams, Mollie	10	16	
	Wolf, C. B	10	16	
	Waslsh, R. C	8	16	
	Wells Fargo Exp. Co	5	16	
	Walker, J. F	92	8	
		8	16	
	Warden, D. H	4	16	
	Wright Bros	4	16	2
		21	4	
	Mr. Kittrell	...	...	1
	Wise building	31	16	
	Walker, Jas	3	16	1
	Woelz Bros	13	16	3

	Name.	No.	Incandescent.	No. arc.
	Wilson & Hubbard	...	...	1
	Wright Tailoring Co	3	16	
	Wood, T. K. & Son	8	16	
	Yeager, Dr. A. J	3	16	
	Young, G. B	1	16	
	Yates, Dr. J. R	8	16	
	Zelliken, Ed	39	16	
187	Zeigler, H	54	4	3
		1	16	
	Long Bell Lumber Co	3	16	
	Ralston, F. C	22	16	
	Lane, J. M	14	16	
	Ferris, J	3	16	
	Ryan & Armil	11	16	
	Wilson, H. L. & Son	6	16	
	Overly, A. J	34	16	
	Burress & Baker	17	16	1
	Donahue & Shade	...	...	1
	Campbell & Redell	13	16	
	Tegler's bakery	9	16	
	White & Harrison	3	16	
	Sabine & Co	25	16	
	Bonsil, F. E	20	16	
	Havens, P. I	15	16	
	Burress, J	8	16	
	Deer, Miles	12	00	
	Grand Union Tea Co	17	16	
	Kost, L. W	1	16	2
	Saighman, E. S	26	16	1
	Beierig & Lambert	...	...	2
	Williams, Mollie, # 2	5	16	
	Siler, W	13	16	
	Fuller & Williams	17	16	
	Gow, H	3	16	
	Wilson, H. C	4	16	
	Palace barber shop	7	16	
	Peters, A. E	5	16	1
	Schulte, F. B	13	16	
	C. W. Monk	13	16	
	M. E. Reed	23	8	
		4	16	
	J. Scruggs	3	16	2
	O. Becker	5	16	
	Maude Buckley	13	16	
188	C. Moore	5	16	
	J. A. Baker & Co	4	16	
	Jung's bakery	40	16	
	Dr. H. H. Ball	4	16	
	M. Aggus	11	16	

Name.	No.	Incandescent.	No. arc.
C. Klein	11	16	
J. Nutto	2	16	
J. A. Awalt	4	16	
Mrs. F. M. Pope	16	16	
Mrs. Taylor	5	8	
Burress & Blackwell	89	4	
	29	16	
	14	8	
Globe Construction Co.	4	16	
D. Russell	13	16	
R. T. Holmes	11	16	
L. B. Price Mer. Co.	1	16	
E. Schollmeyer	7	16	1
Ward & Danline	3	16	
Mrs. A. O'Hare	4	16	
Guaranty Abstract Co.	15	16	1
J. M. Clayton	2	16	
J. A. Zellars	8	16	
G. A. Kleinkuf	...	...	1
H. B. Neil	3	16	
A. J. Frieseke	2	16	
Burnett & Blerton	7	16	
A. B. Cameron	3	16	
K. M. Bradford	100	16	
W. E. & G. J. Grayscom	2	16	
Hines Sisters	...	...	1
Nibergard & Hall	2	16	
Kate Bonsal	8	16	
I. Simon	...	...	3
P. E. Allingham	5	16	
Lewis & Wallace	11	16	
189 Oxendine & Co.	16	16	
Kendall Bros.	4	16	
J. Goldgrabber	1	16	
H. Weigle	60	16	
	3	4	
Mrs. E. Allen	4	16	
T. J. & R. W. McClelland	2	16	
Freeman's foundry	5	16	
J. R. Rugg	9	16	
	2	8	
M. J. Prest	4	16	
United Zinc Co.	10	16	
Turner & O'Brien	25	4	3
	4	16	
	8	8	
Boswell & Bibbins	15	16	
W. D. Knight	2	8	
	5	16	

Name.	No.	Incandescent.	No. arc.
Guengerich & Bro.	...	...	1
Bunch & Co.	...	...	1
F. E. Williams	...	...	1
Congregational church	9	16	2
I. Wolf	6	16	
J. W. Riley	3	16	
Ducket Bros.	...	...	1
W. A. Campbell	7	16	
W. C. Beachel	8	16	
F. B. Dunwoody	9	16	
Graham Grocery Co.	4	16	
W. B. Jones	12	16	
Z. O. Blackwell	...	...	1
L. A. Amsbary	3	16	
W. E. Dinsmore	8	16	
J. A. Brown	8	16	
E. W. Pelton	...	...	1
B. & J. M. Stockton	27	16	3
Pearl McGrath	2	16	
J. G. Starr	5	16	
Tansley & Boyer	4	16	
190 E. J. Stiles	3	16	
Glover & Handley	35	16	
J. A. Miles	20	16	
Robertson & Ladue	6	16	
Hillman & Co.	3	16	
H. M. Rice	7	16	
R. B. Watson	2	16	
National bar	4	16	2
Mrs. Walker	7	16	
Flynn & Malder	3	16	1
J. P. Maguire	2	16	
S. H. Sanderson	11	16	
K. C. Grocery Co.	3	16	
M. H. Kelly	4	8	
	9	16	
J. Carter	7	16	
W. J. Fien	4	16	
F. W. Paschal	15	16	
S. M. Smith	2	16	
A. D. Freeman	13	16	
E. F. Botkin	1	16	
J. A. Graham	1	16	
B. Kleintzas	5	16	
G. R. Berry	3	16	
G. V. Holliday	...	...	1
Philadelphia Candy Co.	...	...	2
Dudley, W. R.	3	16	
Holden, F. C.	21	16	

Name.	No.	Incandescent.	No. arc.
Haggard, L.	3	16	
Chickering, H. L.	8	16	
Central bar	11	16	
G. F. Mackey	4	16	
Clover & Clover	3	16	
Minnie St. Clair	10	16	
I. Gollahar	4	16	
F. B. Rogers	4	16	
191 Star laundry	...	...	1
J. A. Reinhart	8	16	
T. Rogers	2	16	
W. B. Patton	8	8	
	8	16	
G. Munning	2	16	
Sweeney Bros.	5	16	
W. H. Rosenow	8	16	
Jones Bros.	2	16	
Dr. Kay	3	16	
Willow Branch Shoe Co.	48	4	3"
	1	16	
	6666		

Cross-examination by Mr. MONTGOMERY:

Q. This list of pole lines, how did you make this list?

A. By going over the city in a buggy and keeping it as we went over the city.

Q. How long have you been in the city of Joplin?

A. I have been there since the 10th of October.

Q. One line you mentioned there on Seventh street south two blocks, which direction does Seventh street run?

A. Seventh street runs east and west, that is nearly.

Q. Then you stated that you have a statement of a line on Seventh street south two blocks?

A. From Seventh street south two blocks.

Q. Then if it is in that way, it is a mistake?

A. Yes sir.

Q. Have you a sufficient knowledge of the streets and alleys there to make this list?

A. Yes sir, it is very simple when you go over and follow the lines, mark the streets and mark the lines.

Q. Who went with you when you made this list?

A. I didn't go and make the list.

Q. Who did?

A. Mr. Fox.

Q. Did he report that to you?

A. He reported it all to me.

Q. Who copied it, you or him?

A. He copied it.

Q. You couldn't pretend to give it without this paper?

A. No sir, not everything, a good deal of it I could.

192 Q. This statement that the stenographer took down you read from this paper?

A. I read the most of it from this, yes sir.

By Mr. MONTGOMERY: I move to strike out all the testimony of this witness relating to the pole line for the reason that the list was made and written by another person than the witness, and the witness discloses that he has no information on the subject sufficient to testify and he didn't make it, it is independent testimony, and is a paper made by some one else.

By Mr. EATON: The question was originally that he refresh his memory from any memorandum that he had.

Q. You couldn't tell the list of customers, you don't remember the list of consumers, do you personally?

A. No, we haven't but 600 or 700 consumers in there.

Q. What is your custom now in regard to—and what has it been ever since you have been there in regard to requiring consumers to take out a contract for a year?

A. It has been customary with the company to have them sign a contract by the year with the exception of consumers that we request to pay in advance, a consumer that we don't think is good and responsible, and hasn't any backing, we require it in advance.

Q. All other consumers,——

A. All other consumers are required to sign a contract.

Q. By the year?

A. Or else pay a ten per cent. advance over our regular contract rates, to be refunded if they keep service a year.

Q. You haven't a schedule of your lights at this time, have you?

A. Not in my pocket, no sir.

Q. You have them at the office?

A. Yes sir.

Q. Will you furnish the stenographer with a list?

A. The prices?

Q. Yes sir.

A. They are there in a printed form, we will give them to anybody.

Q. I would like to have you furnish the stenographer one

193 of these printed forms when you get back to Joplin?

A. Yes sir.

Q. When was it you stated you went to Joplin?

A. October 10th.

Q. What year?

A. 1900.

Q. Where did you live before that?

A. I was living for two months prior to that in Chicago.

Q. Before that where did you live?

A. In Ottawa, Illinois.

Q. You never was in Joplin before you went there to take charge of this plant?

A. I was not.
Q. Do you know about how much of this pole line that you have enumerated was built before June the 9th, 1896, and how much afterwards?
A. I don't know.
Q. You don't know as a matter of fact when any of it was built?
A. Nothing only what was built since I have been there.
Q. That would be a very small part, wouldn't it?
A. Yes sir.

Redirect examination by Mr. EATON:

Q. This Mr. Fox, of whom you spoke, is he an employé under you as superintendent?
A. He is, yes sir.
Q. What does he do?
A. Well, he is our solicitor, and he has helped me since I have been there, in my line work, in regard to my pole line, we have been getting up a pole-line report and he has been right with me on that work, and he is a man that I guess understands these lines as thoroughly as anybody.
Q. Did he make any reports to you?
A. Yes sir.

By Mr. MONTGOMERY: I object to any testimony about Mr. Fox.

Q. This memorandum from which you have, upon refreshing your memory, given the lines in the city, was made by Mr. Fox?
A. Yes sir.
Q. Under your direction?
A. Yes sir.
Q. And in your employ?
A. Yes sir, and there was another man went with him all the time that he was out on it.

Recross-examination by Mr. MONTGOMERY:

Q. Are most of your customers now under a contract for a year?
A. That I couldn't say.

H. M. WHITEHEAD.

194 Subscribed and sworn to before me this 3 day of —— 1900.

——, *Special Examiner.*

CHARLES E. HODKINS, a witness called on behalf of the complainant herein, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposeth and says as follows:

Direct examination by Mr. EATON:

Q. What is your full name?
A. Charles E. Hodkins.
Q. Where do you reside, Mr. Hodkins?
A. Joplin, Missouri.

Q. Are you connected in any way with the complainant, The Southwest Missouri Light Company?

A. Yes, I am cashier and book-keeper.

Q. As cashier and book-keeper what are your duties?

A. Well, it is to keep track of the accounts and look after the collections and take care of the receipts and disbursements of the money.

Q. Do you have charge of the books containing the list of your subscribers and the number of lights taken by each?

A. Yes, I do.

Q. Where is that book?

A. In the Joplin office.

Q. Is it a large book?

A. Yes sir, just a thousand pages.

Q. Do you know of the taking of this list of the consumers at Joplin from that book, the list that has been offered in evidence in connection with the testimony of Mr. Whitehead?

A. Yes sir.

Q. By whom was that list taken?

A. By C. A. Naylor.

Q. Who is Mr. Naylor?

A. He is a clerk and stenographer.

Q. Did he reduce it to writing on the typewriter?

A. Yes sir, from the ledger, consumers' ledger.

Q. Was that done under your supervision and direction?

A. Yes sir.

By Mr. MONTGOMERY: I object to that because it is leading and suggestive.

A. It was, yes sir.

195 Q. You may look at the list that has been introduced in evidence, and state whether or not it is a correct list of the present subscribers for lights in that city?

A. Well, now, do you want me to go clear through this?

Q. No, I just simply want you to look at the list and state whether it is correct or not?

A. Well, the list is correct to the best of my knowledge.

Q. Do you know it to be copied correctly, to be a correct copy and transcript of the consumers as they appear upon your books?

By Mr. MONTGOMERY: I object to that as leading and suggestive.

Q. It was made out immediately under my supervision or direction, many times my directions were given to the boy regarding the consumers; about the consumers, I think I could in time sit down and give the name of every consumer we have, but I will swear this is a correct copy of the names of the consumers.

Q. Mr. Hodkins, how long have you been connected with the complainant company?

A. Almost four years.

Q. During that time, have you been familiar with its business, and the manner in which it was conducted and carried on?

A. Yes sir.

Q. Do you know about the steps taken by the city of Joplin through a plant they had constructed to engage in commercial lighting?

A. Yes sir.

Q. Do you know about the rates that they proposed to charge for commercial lighting prior to the time they were enjoined in this suit?

A. Yes sir. I saw a schedule published in the paper supposed to be from the commissioners.

Q. Whether or not those rates were lower or higher than the rates you were charging?

A. In almost every instance they were lower.

Q. Do you know anything about the fact as to the effect of the proposed doing of commercial lighting by the city upon your
196 company and its business?

A. Yes sir.

Q. What was that effect, or what would it be?

By Mr. MONTGOMERY: I object to that for the reason that it calls for the conclusion of the witness as to something that will happen in the future, and because it is irrelevant and incompetent.

A. It would have a tendency to reduce our rates and depreciate the value of our property; one of our customers, who is under a yearly contract and paying us about eighty dollars a month came to me at the expiration of his contract and said that we would have to cut down in our price that the city had come around and offered to light him for about twenty-five per cent. less than we were lighting him, and if we wanted his trade next year we would have to get lower.

By Mr. MONTGOMERY: I object to that because it is hearsay and the statement of some other party.

A. It is the statement of a consumer.

Q. Was that before the injunction was granted in this suit?

A. Yes sir, they were then putting in commercial lights.

Q. To what extent had they been putting in commercial lights?

A. Well, they had put in, I guess a dozen or more places to my personal knowledge.

Q. Are they still carrying on that business with those that they put in before the injunction was granted?

A. Quite a number of them, yes sir.

Q. Have they put in any since?

A. Not to my knowledge.

Q. Now you are familiar with the cost of furnishing lights to consumers in the city of Joplin?

A. As to the cost of manufacturing the light?

A. Well, furnishing the lights, that is, of doing the lighting business for commercial business?

A. As to the cost, you mean, or what it costs us?

Q. Yes?

A. No, I can't say that I am.

Q. Can you tell us what the effect would be upon the com-
197 plainant company of the city engaging in the commercial lighting business upon the rates and schedules which it published and proposed to put into force?

A. Well, it *if* did that business it would have a tendency of course to take away our business.

By Mr. MONTGOMERY: I object to that question and answer because the witness has not shown himself competent to answer the question and it is simply a matter of his opinion and that is not a matter calling for expert testimony.

Cross-examination by Mr. MONTGOMERY:

Q. You say you are cashier and book-keeper?

A. Yes sir.

Q. How long have you been cashier and book-keeper?

A. Almost four years.

Q. What was your business before that?

A. I was connected with the Western Union Telegraph Company at Cincinnati, Ohio, as a kind of manager of the branch offices at seven offices.

Q. In what business were you engaged before you were employed by them?

A. Before I was employed by the Western Union Telegraph Company?

Q. Yes sir?

A. I was employed as the assistant general manager of the Commercial Telegraph at Kansas City.

Q. Then you never was in any electric light company's employ except as cashier?

A. No sir, not with an electric light company.

Q. And you never had any other experience in that business?

A. No sir—I was also in an electric supply house for some time.

Q. You say you was in an electric supply house?

A. Yes sir.

Q. Where was that?

A. Kansas City.

Q. When?

A. That was about—let's see, four, six, seven years ago, seven or eight years ago.

Q. How long was you engaged in that business?

A. About nine months.

Q. Was you in business yourself, or simply a clerk in the store?

A. I was assisting in the store, a wholesale house it was.

198 Q. You was a clerk in the store?

A. Solicitor, yes sir.

Q. Solicitor and sold goods?

A. Yes sir.

Q. That has been your experience then, and from that you pretend to tell what the effect of doing this business by the city would have on your business?

A. Only as the consumers told me; several of them came and told me that the city had offered them a lower rate, and they were going to quit us unless we gave them a lower rate.

By Mr. MONTGOMERY: I object to that answer.

Q. You have no more information on that subject than any one else, have you?

A. I think I ought to have, I have been there four years, and been in the active management.

Q. Cashier and book-keeper?

A. Yes sir, and in some ways connected with the management. I was the manager for some time.

Q. When was that?

A. When S. J. H. White was relieved.

Q. Who succeeded him?

A. Mr. Parsons.

Q. Well, if the city should charge proper rates, you would suffer no more from the city's competition than you would from the competition of any other company, would you?

A. Why, no further, of course, than that we would be subject to taxation and they would not; I don't see why if they would furnish the same service.

Q. I say so far as the competition is concerned it would hurt you no more?

A. No sir.

Q. Than to compete with any other company at reasonable rates?

A. No sir.

Q. You think that their prices are too high?

A. The city's prices?

Q. Yes, or too low?

A. I should think too low.

Q. What prices are too low now?

A. We made several inquiries, now for instance where the council brought the matter up, we are charging the city of Joplin six dollars a month for an arc light, and we represented to them and also to Webb City that they had cheaper lights than any city
199 in the United States had for a light all night long, and in fact two or three parties wrote to different towns and asked what they were paying for lights.

Mr. MONTGOMERY: I object to that statement because it is hearsay and refers to letters that somebody wrote, I didn't ask you for anything of that kind.

By Mr. EATON: I would like to have him complete the statement that he started to make.

Q. My question was about the rates, not about what you was charging the city, I refer to the city's commercial lighting rates?

A. Well, their general rates, their arc rates are lower than ours.

Q. What were the city's arc rates as stated?

A. All of them I can't tell you, but the all-night arc rate was eight dollars, and the ten-o'clock rate was four dollars, and even less

than four dollars where parties took more than one, but I am not sure about the schedule, that is my recollection of the schedule.

Q. What was the city's incandescent service rate for midnight circuit per month, sixteen-candle power?

A. I think for one light it was probably sixty cents or sixty-five cents, and then there was a sliding scale.

Q. Are you sure that it was sixty-five cents?

A. No, sir, I told you I was not, I told you I was sure of their arc rates but I can't remember all of their schedule rates nor you couldn't either.

Q. You say that the city is now furnishing some commercial lights?

A. Yes sir.

Q. Who are they furnishing?

A. They are furnishing what is called Frank's saloon down between Second and Third on Main, A. H. Rogers' residence, and several that I do not just recollect the names now.

Q. Anybody else that you know of?

A. I couldn't recollect the names, but the way I know they are, we had a check made of our service a short time ago, had it
200 checked up, and the boys came back and reported service in certain places and we didn't have them on the books and we sent them back to see who was furnishing them.

Q. You are swearing now about what somebody reported?

A. So far as A. H. Rodgers is concerned I am not, he came in and told me.

Q. Then you are swearing about what Mr. Rodgers came in and told you and about the others you are swearing what somebody reported?

A. Yes sir.

Q. How does this testimony compare with your other testimony? Is it all what somebody told you?

A. I didn't say in my other testimony that it was what somebody told me.

Q. I am asking you that, your other testimony is what you know yourself?

A. It is what I know, yes sir.

Redirect examination by Mr. EATON:

Q. Do you know of the city, in its schedule offering a ten-candle power, twelve-o'clock light at twenty-five cents per month two lamps at forty-five, and five lamps at eighty-five?

A. Those schedule prices, I of course couldn't remember all of them, I read them at the time, and several of them I remember positively.

Q. You know they were lower than yours?

A. Yes sir.

Recross-examination by Mr. MONTGOMERY:

Q. Do you have any ten-candle-power lights?

A. Yes sir and eight and four.

Q. Has the city any ten-candle-power lights?

A. Yes sir.

Q. Well, in your estimate of their lights, their rates for lights being too low, don't you take it from some report you saw in the newspaper somewhere?

A. No, I take it from our own schedules.

Q. No, but I mean, the city's schedule?

A. I say I compared it with their own schedule.

Q. Did you ever see the schedule that they filed with the city clerk that was adopted by the council?

A. No, I just saw the published schedule in the paper at Joplin.

201 Q. Well, that was just simply a publication like this in the newspaper. (Hands witness clipping from newspaper.)

A. I couldn't say that it was like that, it was a publication in the paper.

Q. Then that's all you know about it, you don't know the light schedule adopted by the city?

A. I couldn't swear to it, no sir.

By Mr. MONTGOMERY: Then I object to all this statement of the witness about the city's light schedule, for the reason that the witness now states that all the information he has on the subject is what he saw in newspaper reports.

CHARLES E. HODKINS.

Subscribed and sworn to before me this — day of ——, 1900.

——— ———,
Special Examiner.

By Mr. EATON: Counsel for complainant now notifies counsel for defendant that he closes his testimony.

By agreement between the parties hereto, the depositions of H. M. Whitehead and Charles E. Hodkins were sent to Joplin, Missouri, by me, and were signed by the said H. M. Whitehead and Charles Hodkins at Joplin, Missouri, in the presence of counsel for both parties and were not signed in my presence; and for that reason I have not so certified.

DARIUS A. BROWN,
Special Examiner.

202 In the Circuit Court of the United States, Western Division of the Western District of Missouri.

SOUTHWEST MISSOURI LIGHT COMPANY, Complainant,
vs.
THE CITY OF JOPLIN, a Municipal Corporation, Defendant.

I, Becca Edwards, special examiner, named in the annexed commission, do hereby certify that on the 10th day of December, at the city of Joplin, county of Jasper and State of Missouri, I was attended by John A. Eaton, Esq., solicitor for complainant, and

Charles H. Montgomery, Esq., solicitor for defendant, and by the witnesses on behalf of complainant, E. C. H. Squire, L. A. Fillmore and J. W. Freeman, and the said witnesses who were of sound mind and lawful age, having been by me carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the within-entitled cause, gave their testimony which by consent of counsel for the respective parties, was taken down by me stenographically in the presence of the witnesses, and from their statements, and the said stenographic notes were afterwards reduced to writing by me, and the testimony as extended was thereafter read over and corrected and signed by said witnesses.

In witness whereof, I have hereunto set my hand and seal this 25″ day of January A. D. 1901.

BECCA EDWARDS,
Special Examiner.

203 In the United States Circuit Court, Western Division, Western District of Missouri.

SOUTHWEST MISSOURI LIGHT COMPANY, Pl'ff.
vs.
THE CITY OF JOPLIN, Def't.

Testimony in Behalf of Complainant, Taken Before Miss Becca Edwards, Special Commissioner Appointed by said Court.

The complainant produced E. C. H. SQUIRE, who being duly sworn, to testify the truth, the whole truth and nothing but the truth, testifies as follows:

Direct examination—Mr. JOHN EATON:

Q. What office do you hold in the city of Joplin?
A. City clerk.
Q. How long have you been city clerk?
A. Three years ago last April.
Q. As such clerk have you the custody of the records of the city?
A. Yes, sir.
Q. Have you the custody of the ordinances and resolutions and other acts of the mayor and councilmen of the city?
A. Yes, sir.
Q. Have you a record in your office of ordinance # 106, approved April 17th, 1888, organizing the city of Joplin under the general law as a city of the third class, and the mayor's proclamation published thereunder on May 10th, 1888?
A. Yes, sir.

We offer ordinance # 106, which is in words and figures following to wit:

(From the Joplin Daily News, April 18th, 1888.)

Ordinance No. 106.

An ordinance surrendering the present special city charter of
204 the city of Joplin, Missouri, and organizing under the general law as a city of the trird class.

Be it ordained by the council of the city of Joplin:

SECTION (1). That the city charter and all acts amendatory thereof, enacted by the legislature of the State of Missouri for the government of the city of Joplin and now in force, be and the same are hereby surrendered, when ratified by the people as hereinafter provided.

SECTION (2). The mayor is authorized and instructed to issue his proclamation ordering a special election to be held at the usual places in the respective wards in said city on Tuesday, May 8th, 1888, to vote on the proposition to surrender the present special city charter and to organize under and by virtue of the general law as a city of the third class.

SECTION (3). The city clerk shall, as soon as the mayor's proclamation shall have been published, have the necessary poll books and ballots prepared for the special election herein provided for.

The ballots shall be as follows:

To surrender the special city charter of the city of Joplin, Missouri, and organize under and by virtue of the general law as a city of the third class. Yes—No.

SECTION (4). All ordinances and parts of ordinances inconsistent with the provisions herein contained are hereby repealed.

SECTION (5). This ordinance shall take effect and be in force from and after passage and publication.

Approved April 17th, 1888.

C. LIVINGSTON, *Mayor.*

Attest: JULIUS FISHER, *City Clerk.*

205 I hereby certify that the above is a true copy of a city ordinance of the city of Joplin, Missouri, published in the Joplin Daily News of April 18th, 1888.

H. L. CRITTENDEN,
Publisher Joplin Daily News.

Joplin, Mo., Jan. 30th, 1900.

Subscribed and sworn to before me this 30th day of January, 1900. My term expires Aug. 17th, 1901.

J. W. McANTIRE,
Notary Public.

[SEAL.]

In connection with that ordinance we offer the mayor's proclamation thereon of May 10th, 1888, as published in the Joplin Daily News of that date, as follows:

(Joplin Daily News of May 10th, 1888.)

Mayor's Proclamation.

Whereas, the city council of the city of Joplin Missouri on the 18th day of April, 1888, passed an ordinance to surrender the special charter of said city, and organize under and by virtue of the general law as a city of the third class, and submitted the same to the legal voters of said city at an election held for that purpose on the 8th day of May, 1888; and that

Whereas, a majority of the legal voters, voting at said election ratified said ordinance by voting thereat to surrender the special city charter of the city of Joplin, Mo., and organize under and by virtue of the general law as a city of the third class,

Therefore, I, Chancellor Livingston, mayor of said city of Joplin do hereby proclaim and declare they by virtue of such vote the special charter of the city of Joplin aforesaid has been surrendered and that the city of Joplin is incorporated under the provisions of the general law of the State of Missouri providing for the
206 government of cities of the third class.

Given under my hand this 10th day of May, 1888.

CHANCELLOR LIVINGSTON, *Mayor.*

I hereby certify that the above is a true copy of a proclamation of the mayor of the city of Joplin, Mo., as published in the Joplin Daily News of May 10th, 1888.

H. L. CRITTENDEN,
Publisher Joplin Daily News.

Joplin, Mo., Jan. 30th, 1900.

Subscribed and sworn to before me this 30th day of January, 1900. My term expires August 17th, 1901.

[SEAL.]

J. W. McANTIRE,
Notary Public.

Q. Have you any record Mr. Clerk, of the publication of such document?

A. I don't think so; if so I would have to hunt for it, it is among the old papers.

Q. This has been a city of the third class, has it not, ever since you have been clerk?

A. Yes, sir.

Q. How long have you been clerk?

A. Ever since April, '97.

Q. Have you any means of knowing when it became a city of the third class other than the ordinance introduced in evidence and the proclamation referred to?

A. No, sir.

Q. Have you in your possession the record of ordinance #441?

A. Yes, sir.

Q. Will you please produce that ordinance? Where do you find this ordinance recorded?

A. In volume # 6 of the record.
Q. What pages?
A. 589–593 inclusive.
Q. Have you any record of its publication?
207 A. No, sir, there was no proof of publication taken at that time at all.
Q. Can you tell what paper it was published in by the record?
A. I could by hunting through to see what paper we had contracted with at that time.
Q. I would like to know that fact, Mr. Squire.
A. It was the "Herald Printing Company."
Q. Is that company still in existence here now?
A. The newspaper is still here and the files are, but it has changed the name.
Q. Have you a record of the acceptance of the provisions of that ordinance?
A. Yes, sir.
Q. Where does that record appear?
A. In volume 6, page 607.
Q. Do you find further records regarding matters presented to the council by the "Merchants' Electric Light and Motor Company"?
A. I find this proposition.
Q. Just read the proposition that you find.
A. "Sapp presented a proposition from the 'Merchants' Electric Light and Motor Company' to light the streets of the city *in* incandescent electric lamp- which was on motion received and placed on file."
Q. Is there any further record there about that plant, its construction or anything of that kind?
A. I don't know whether there is or not.
Q. Now is there a contract there—an ordinance granting a franchise or entering into a contract with the Southwest Missouri Electric Light and Water Power Compnay?
A. I think there is; ordinance No. 105.
208 Q. What date was that passed?
A. April 17th, 1888.
Q. You have an ordinance then before you making a contract to the city for electric light to April 17th, 1888?

(Space caused from striking out ordinance No. 441.)

Q. Have you a record of ordinance # 98?
A. Yes, sir.

Complainant offers that ordinance which is here copied as follows:

Ordinance No. 98.

An ordinance in relation to the erection and operation of electric light and power plant in the city of Joplin.

Be it ordained by the council of the city of Joplin as follows:
SECTION 1. That W. G. Sergeant, his heirs, successors and assigns

shall have the right, privilege and franchise within the corporate limits of the city of Joplin and such additions as may be made thereto, of building, laying, erecting, operating, maintaining, using, repairing and running electric apparatus and appliances, electric machines, engines, towers masts, lamp-posts, lamps, wires, poles, pipes, and all other machinery necessary for the use and application of electricity for the purpose of lighting, heating and motive power and using, running and operating said electric apparatus for purpose of supplying light, heat and power for hire, or using and occupying the streets, lanes, alleys and public grounds of the city of Joplin for the erection of towers, lamp-posts, masts and wires therein, and laying and maintaining wire and pipes therein and for repairing thereof without injury to the rights of the property of individuals or corporations, or public detriment, except tem-
209 porary inconvenience caused by the same; and in every instance in which the surface of any street, lane, alley or public ground of the city is broken, and holes or trenches dug therein for the purpose of erecting lamps, posts, towers and laying pipes, they shall be repaired as soon as possible and placed as near as practicable in as good condition as before said lamps, posts or towers were erected or pipes laid therein; and whenever the city council deem any mast, post or tower so erected an obstruction, the same shall be removed by their order and at the expense of W. G. Sergeant, his heirs or assigns.

SECTION 2. The wires used by the said W. G. Sergeant, his heirs or assigns for the purpose of conveying the currents of electricity shall be insulated wire, or such as is approved by the board of underwriters, and shall not be placed or located so as to interfere with any telegraph or telephone wires now already erected in the city, and that said W. G. Sergeant, his heirs, successors or assigns shall be held responsible for all damage that may result from negligence in erecting or operating said electric light wire, and other appliances, and shall always keep the same in safe condition; and upon the failure of the said W. G. Sergeant, his heirs, successors or assigns to use lamps, posts and towers erected, they shall remove the same, and if not removed by them, may be removed as any other obstruction, at the expense and cost of the said W. G. Sergeant, his heirs, successors or assigns.

SECTION 3. The said W. G. Sergeant, his heirs, successors or assigns, shall not be allowed to charge for any lights a price to exceed ten dollars ($10) for ten-o'clock circuit, twelve dollars ($12) for twelve-o'clock circuit and fifteen dollars ($15) for all-night circuit, and for incandescent lights of sixteen-candle power one dollar and
210 twenty-five cents ($1.25) for ten-o'clock circuit and one dollar and fifty cents ($1.50) for all-night circuit, the price for both arc and incandescent to be for the use of the same for one month.

SECTION 4. The said W. G. Sergeant shall within ten days after the passage of this ordinance, file a written acceptance of this franchise with the city clerk, of the city of Joplin, who shall report the same to the city council.

SECTION 5. This ordinance shall take effect and remain in force from and after its publication.

J. L. BRIGGS, *Mayor.*

Attest: JULIUS FISHER, *City Clerk.*

Complainant offers ordinance No. 99 making contract with W. G. Sergeant. Here copied as follows:

Ordinance No. 99.

An ordinance to provide for the lighting the streets of Joplin, Missouri, with electricity.

Be it ordained by the council of the city of Joplin as follows:

SECTION 1. That seven arc electric lamps of the Thompson-Houston system of two-thousand-candle power each, are hereby ordered, leased and contracted for by the city of Joplin, from and with W. G. Sergeant, his heirs and assigns, for the term of one year from the 1st day of April, 1887. That said lamps are to be located on Main street, between First street and Eighth street inclusive, said lamps to be placed at the intersection of Main street with the cross-streets and to be swung from the center of a cable crossing the street where it intersects, at least 30 feet high.

SECTION 2. That for the use of the said seven arc electric lamps and the furnishing the same, and keeping the same in repair, and lighting and keeping the same lighted with electricity from one-half hour after sunset and to continue lighted until one hour before sunrise for a term of one year from April 1st, 1887, the city of Joplin agrees to pay said W. G. Sergeant, his heirs or assigns, the sum of seven hundred and fifty dollars ($750) per annum, in city warrants in instalments of sixty-two and $\frac{50}{100}$ dollars ($62.50) per month;

provided, however, the said W. G. Sergeant, his heirs or
211 assigns shall not receive pay for any lamp or lapms unless the same be kept lighted according to this ordinance.

SECTION 3. That said W. G. Sergeant shall file with the city clerk his written acceptance of this ordinance within five days after the passage of the same, and have the streets lighted by said lamps in the manner aforesaid on or before the 1st day of May 1887.

SECTION 4. This ordinance shall take effect and be in force from and after publication.

J. L. BRIGGS, *Mayor.*

Attest: JULIUS FISHER, *City Clerk.*

Q. That ordinance appears to grant a franchise to W. G. Sergeant. Who succeeded to the rights granted to W. G. Sergeant?

A. Joplin Electric Light and Power Company, I think that was the first company organized.

Q. Was there any contract made with that last-named company?

A. Yes, sir, there was a contract made by ordinance No. 105.

Complainant offers ordinance No. 105.

Ordinance No. 105.

An ordinance in relation to lighting the streets of Joplin with electricity, locating and contracting for the supply and maintainance of electric arc lamps with and by the Joplin Electric Light and Power Company, of Joplin, Missouri, its successors and assigns.

Be it ordained by the council of the city of Joplin as follows:

SECTION 1. That seventeen arc lamps of two-thousand-candle power (nominal) each, are hereby leased, ordered, and contracted for by the city of Joplin for a term of one year from the 1st day of May, 1888, from the Joplin Electric Light & Power Co., its successors and assigns, a corporation organized and doing business
212 in the city of Joplin, under and by virtue of the laws of the State of Missouri.

For the furnishing, erecting and use of said lamps, maintaining the same in repair and supplying the same with carbons and lighting and extinguishing the same, the city of Joplin hereby agrees to pay to said Joplin Electric Light and Power Company, its successors and assigns, the sum of ninety-four dollars and eleven cents ($94.11) per annum, payable monthly in city warrants, for each electric arc lamp so provided, erected, lighted and kept in repair according to the provisions of this ordinance. Provided that in no case shall the said Joplin Electric Light and Power Company its successors and assigns, receive pay for any lamp or lamps which shall not be erecte- lighted and kept burning according to the provisions of this ordinance.

SECTION 2. That all the said public electric lamps shall be lighted on every night in each month, one-half hour after sunset and continue lighted until one hour before sunrise, with the exception of nights or parts of nights in each month embodied in the period during the second and third quarters of each moon, in which the moon shines clear.

SECTION 3. That all additional public arc lamps, herein contracted for to the ones now in use, shall be suspended by the means of poles and wires over the center of the streets herein described, at a height over such streets and alleys — than forty-five (45) feet, at the expense of the said Joplin Electric Light and Power Company its successors and assigns, and said lamps shall be located as follows:—

One at the corner of Main and Ninth street-.

One at the corner of Pearl and Ninth street-.

213 One at the corner of Moffet avenue and Fourth street.

One at the corner of Pennsylvania avenue and Fourth street.

One at the corner of Jackson avenue and Sixth street.

One at the corner of Sergeant avenue and Third street.

One on the west end of Broadway bridge.

One at the corner of Main street and Cox avenue.

One at the corner of Main street and Galena avenue.

SECTION 4. That the said Joplin Electric Light and Power Co. shall within five days from the passage of this ordinance, file its written acceptance of the provisions herein contained, with the city

clerk of Joplin, who shall report the same to the city council at its next regular meeting thereafter.

SECTION 5. This ordinance shall take effect and be in force from and after its passage, publication, and acceptance by the Joplin Electric Light and Power Company.

Approved April 17th, 1888.

C. LIVINGSTON, *Mayor.*

Attest: JULIUS FISHER, *City Clerk.*

Q. After the expiration of the time names in that contract was it extended or another one made?

A. Yes sir.

Q. What are the subsequent contracts growing out of franchise No. 98?

A. The next contract was made on the 21st day of February, 1894.

Q. Between what companies?

A. Between the Southwestern Electric Light and Water Power Company and the City of Joplin.

Q. You have that contract in your possession?

A. Yes, sir.

Complainant here offers this contract, which is as follows:

This agreement made and entered into this 21st day of February in the year eighteen hundred and ninety-four, between the City of Joplin a municipal corporation of the State of Missouri, party
214 of the first part, and the Southwestern Electric Light and Water Power Company a corporation organized and existing under and by virtue of the laws of the State of Missouri, party of the second part, witnesseth:

That whereas, the party of the first part is desirous of procuring its public streets and buildings to be lighted by electricity and whereas, the party of the second part has an electric plant located and situated in or near said city of Joplin,

Now therefore, in consideration of the mutual covenants, promises and conditions hereinafter mentioned, it is hereby agreed between the parties as follows:—

SECTION 1. That this contract and each and every provision thereof shall continue and be in force from the first day of May 1894 to the first day of May, 1899, a period of five years, unless it shall sooner be terminated by the provisions herein contained.

SECTION 2. That said second party, its successors or assigns agree to be and are bound in the sum of ten thousand dollars ($10,000) with good and sufficient security, to furnish said city, the first party, with arc lamps to light the streets of said city, as the council may desire and by resolution, order from time to time. Said lamps to be full two thousand (2000) candle power, kept and maintained at that standard, and lighted at sunset and to continue lighted until sunrise, at all times, at and for the consideration hereinafter mentioned.

SECTION 3. That said second party shall maintain said lamps and

keep them in repair, supply them with carbons, and light and extinguish the same, for which the said party of the first part, city, shall and hereby agrees to pay the said second party at the rate of seventy-two dollars ($72.00) per year for each and every arc light furnished; to be paid in monthly warrants drawn upon the
215 city treasury, provided, however, the second party shall receive no pay for any lamp or lamps not lighted and kept running according to this contract.

SECTION 4. That all said arc lamps shall be suspended by means of poles and wires over the streets designated, at a height of not less than forty-five feet (45), erected and maintained at the expense of said second party, and that all such poles used shall be sound and large enough for such purposes and properly guyed, and any poles showing signs of weakness or decay shall be at once taken down and replaced by sound, suitable ones, by the second party.

SECTION 5. That the city of Joplin shall have the right to order any of the lamps in use on the 1st day of May 1894, to be changed to some other location, which change or changes shall be immediately made by the second party at its own expense, provided, however that all such changes of location shall be ordered by the council within ninety days (90) from May 1st, 1894; and provided further, that if such changes shall necessitate the extension of the lines of the second party, or if any additional lights hereafter ordered, during the terms of this contract, shall necessitate the extension of the lines of the second party, or any additional lights hereafter ordered, during the terms of this contract shall necessitate such extensions, said second party shall not be compelled to make such changes, or furnish the lights on such extensions, unless the city shall take and pay for at least four arc lights for each and every mile of said extension, made necessary by such changes or additional lights, or at the same rate for each fraction of a mile.

SECTION 6. That the city shall be held blameless of and
216 defended from any destruction of property, or damage to persons or property caused by the maintenance, operation and repairing of said company's plant.

SECTION 7. That whenever it may become necessary to remove poles, as in the widening of streets, or any public requirement whatsoever, and the company being notified thereof, shall at once proceed to make the changes required at its own expense.

SECTION 8. That the party of the first part, by its council, reserves the right to discontinue the use of any light or lamp at any time, that is being used by the city on May 1st, 1894, and shall not be obliged to pay for the same during such disuse, provided, however, that the city shall not have the right to discontinue the use of any arc light or lamp during the term of this contract, the furnishing of which shall have necessitated the extension of second parties' lines.

SECTION 9. The failure of the party of the second part to comply with the foregoing terms and conditions, will work forfeiture of their rights under this contract, and the city shall have the right to demand any loss or damage suffered by it on the bond, and may order the removal of the lamps, poles, wires and fixtures from the streets

of said city, which are used and maintained expressly and only for the street lighting.

In witness whereof, the party of the first part has caused this instrument to be duly signed, sealed and attested by its proper executive and municipal officers, and the party of the second part has caused this agreement to be signed, sealed and attested by its duly authorized executive officers on this the 21st day of February, A. D. 1894.

THE CITY OF JOPLIN, STATE OF MISSOURI,
By W. B. HALYARD, *Mayor.*

Attest: R. A. SPEARS, *City Clerk.*

217 SOUTHWESTERN ELECTRIC LIGHT AND WATER POWER COMPANY,
By E. L. MARTIN. *President.*

Attest: F. B. WILCOX, *Secretary.*

Q. Was that contract further extended?

A. Yes, sir.

Q. You find that record that you have just read and has just been copied in the record of the proceedings of the mayor and council of the city of Joplin, do you?

A. Yes, sir.

Q. What date?

A. May 9th, 1899. It appears here that two franchises were granted one by ordinance No. 98 to W. G. Sergeant and one by ordinance No. 441 to the Merchants' Company. Do your records show at what point, if any and what place the interests of these two companies became merged?

A. No, sir, it is not a matter of which we had anything to do. We have no record of it.

Q. Is there any record, Mr. Squires, of the acceptance of the Sergeant franchise?

A. Yes, sir.

Q. Please turn to that record.

A. The clerk made the acceptance of W. G. Sergeant of ordinance No. 98; that is in volume 4, page 551.

Q. What date?

A. April 5th, 1887.

Q. Have you a record of the ordinance calling a special election for the purpose of submitting to the qualified voters of the city to vote bonds for the purpose of building an electric light plant, being ordinance No. 1160.

And have you the record of the notices of special election following such ordinance and the ordinance confessing the vote and ordering the issuance of the bond # 1165 and the notice of the sale of the electric light bonds?

218 A. I *ah*ve the record of those ordinances but not of the publications I have those publications but not sworn to.

Complainant offers ordinance #1160 which is as follows:

Ordinance 1160.

An ordinance authorizing the calling of a special election for the purpose of submitting to the qualified voters of the city a proposition to increase the indebtedness of the city of Joplin for the purpose of building an electric light plant to be owned, controlled, and operated by the city, authorizing the council and officers of the city to issue bonds therefor, and to provide a sinking fund to pay the same.

Be it ordained by the council of the city of Joplin, Missouri, as follows:

SECTION 1. That the following proposition to authorize the city council and officers of the city to increase the indebtedness of the city and issue bonds therefor, be submitted to the qualified voters of the city of Joplin, Missouri, at a special election to be held for that purpose as hereinafter provided, on the 28th day of February, 1899, at the usual voting places in said city, to wit:—

To increase the indebtedness of the city thirty thousand dollars ($30.000) for the purpose of building an electric light plant to be owned, controlled and operated by the city and that the city council also provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting said indebtedness. The city reserves the right to take up said bonds or any of them after five years.

SECTION 2. The mayor of the city is hereby authorized
219 and directed to issue a notice calling a special election on the 28th day of February, 1899, notifying the voters of the city of Joplin that said special election will be held in the several wards of the city on the day and date aforesaid, for the purpose of determining whether or not the city, the city council and officers of the city shall be authorized to increase the indebtedness of the city in the manner and for the express purpose as is in the first section of this ordinance provided.

That the notice of said election shall be published in the "Joplin Daily Globe" the "Joplin Daily News" and the "Joplin Daily Herald" for at least fifteen days before the date of holding the same.

Said notice to be signed by the mayor and attested by the city clerk.

SECTION 3. The city clerk, shall as soon as the notices of the said election shall have been published, as herebefore provided for, have the necessary ballots and poll books prepared and in the following form, to wit:—

To increase the debt of the city of Joplin thirty thousand dollars ($30,000) for the purpose of building an electric light plant to be owned, controlled and operated by the city, to issue bonds therefor and to authorize the city council to levy an annual tax sufficient to

pay the interest on the bonds as they fall due, and for sinking fund for the payment of the same.

Yes.

To increase the debt of the city of Joplin thirty thousand dollars ($30,000) for the purpose of building an electric light plant to be owned, controlled and operated by the city and to issue bonds therefor, and to authorize the city council to levy an annual tax sufficient to pay the interest on the said bonds as they fall due, and for a sinking fund for the payment of the same.

No.

220 All those voting in favor of the proposition shall have written or printed on their ballots after the proposition the word "Yes."

All those voting against said proposition shall have written or printed on their ballots after the proposition the word "No."

SECTION 4. This ordinance shall take effect and be in force from and after its approval and publication.

Approved this 7th day of February, 1899.

T. W. CUNNINGHAM, *Mayor.*

Attest: E. C. H. SQUIRE, *City Clerk.*

Notice published in the "Joplin Daily Globe" February 9th signed T. W. Cunningham, mayor, attest E. C. H. Squires. Ordinance #1165, approved March 1st, 1899, which is as follows:

Ordinance No. 1165.

An ordinance declaring the result for special election held on Tuesday, the 28th day of February, 1899, to determine whether or not the city council and city officers of Joplin, Missouri, would be authorized to increase the indebtedness of the city of Joplin, Missouri, thirty thousand dollars ($30,000) for the purpose of erecting an electric light plant to be owned, controlled, and operated by the city, and to issue bonds therefor and authorize the mayor and city clerk to issue said bonds, provide for the sale of the same and to provide for a sinking fund for the payment of the interest and principal of the same.

Be it ordained by the council of the city of Joplin, Missouri, as follows:

SECTION 1. That it is hereby declared that a special election — held on Tuesday, February 28th, 1899 for the purpose of determining whether or not the city council and city officers should be

221 authorized to increase the indebtedness of the city thirty thousand dollars ($30,000) for the purpose of building an electric light plant to be owned. controlled and operated by the city and to issue bonds therefor. That the vote on said proposition was a- follows: Total vote cast 1035. For the increase of debt, "Yes," 813; for the increase of debt "No" 222.

SECTION 2. The proposition having received more than two-thirds of the votes cast at said election it is hereby determined and

declared that the said proposition carried and that the city council is hereby authorized to issue bonds for thirty thousand dollars ($30,000) the amount authorized by said election, and that the indebtedness of the said city of Joplin, Missouri be and the same is hereby increased in the sum of thirty thousand — ($30,000) for the purpose mentioned in section 1 of this ordinance.

SECTION 3. There *is* hereby issued by the proper officers of the city of Joplin, Missouri, in accordance with the provisions of section 2 of this ordinance bonds to and for the amount of thirty thousand dollars ($30,000) to be known as the city of Joplin electric light bonds.

SECTION 4. Said bonds shall be issued in the series of sixty (60) and shall run from numbers one to sixty inclusive, payable to bearer and shall bear face value of five hundred dollars each ($500). They shall run for a term of twenty years and may be redeemed by the city at its option after five years and shall bear five per cent. interest per annum, payable semi-annually from date of issuance until paid, said bonds to be payable at the Miners' Bank in Joplin, Missouri.

SECTION 5. Said bonds shall be in the care of the city treasurer who shall procure the signature of the mayor and attestation of the city clerk thereto. The city treasurer shall have exclusive possession of said bonds and shall be the sole agent of the city in
222 disposing of the same and all monies arising from the sale of said bonds shall go into the fund for the purpose of building an electric light plant to be owned, controlled, and operated by the city.

SECTION 6. The city council of Joplin, Missouri, shall annually levy a tax sufficient to pay the interest on said bonds and to pay the principal of said bonds as they become due.

SECTION 7. This ordinance shall take effect and be in force from and after its publication and approval.

Approved this 1st day of March, 1899.

T. W. CUNNINGHAM, *Mayor.*

Attest: E. C. H. SQUIRES, *City Clerk.*

Complainant also offers ordinance # 1175 recorded in Record "C," page 329 being an ordinance providing for the appointment of a board of managers for the city electric light plant and regarding the duties thereof, which is ordinance # 1175 as follows:

Ordinance No. 1175.

An ordinance providing for the appointment of a board of managers for the city electric light plant and describing the duties therof.

Be it ordained by the council of the city of Joplin, Missouri as follows:

SECTION 1. That the mayor is hereby authorized and directed to appoint a board of managers of the Joplin electric light plant consisting of three members, one member from each of the three principal political parties being represented in this city, said appointment

however, to be with the advice and concurrence of the council. The first board appointed hereunder to be for one, two, and three years respectively, and thereafter all members to — appointed for three years.

223 SECTION 2. That each member of said board shall receive a salary of fifty dollars ($50) per annum.

SECTION 3. That it shall be the duty of said board to inquire into, investigate and receive propositions for the building, erecting and equipping of an electric light plant in the city of Joplin to be owned, controlled and managed by said city and to investigate, inquire into and receive propositions for the suitable grounds for the erection and maintenance of said plant.

SECTION 4. That said board shall have full control over the employment and discharge of employés, the regulation of the salaries, and price for lights, contracting with private consumers therefor, and the collection of rental thereon, and the purchase of all supplies and necessary repairs. All such enumerated duties, however, to be reported to the council, and to receive the approval of the mayor and council of the city of Joplin. Said council not intending hereby to authorize said board to enter into any contracts binding the city regarding the matter in this section and section No. three enumerated, but all such propositions, agreements and acts they shall do hereunder shall be first reported to the council by them, and by the council approved.

SECTION 5. Said board shall make full and detailed reports to the council of all receipts, expenditures in and about the maintenance of said plant on the first day of each and every month. The approval for such expenditures to be first made by the council before they are paid.

SECTION 6. That the expense of operating said plant shall be paid as far as possible out of the revenues derived from the sale of lights to private consumers and any surplus of revenues shall be turned into the general fund of the city.

SECTION 7. This ordinance shall be in force and go into effect from and after its approval and publication.

Approved this 22nd day of March, 1899.

T. W. CUNNINGHAM, *Mayor.*

224 Attest: E. C. H. SQUIRE, *City Clerk.*

Q. That is all.

E. C. H. SQUIRE.

Subscribed and sworn to before me this 21st day of January, 1901. My term expires January 3, 1903.

[SEAL.]

BECCA EDWARDS,
Special Commissioner.

L. A. FILLMORE, of lawful age, being produced, sworn and examined on behalf of the plaintiff, deposeth and saith:

Direct examination—Mr. EATON:

Q. Mr. Fillmore, do you reside in the city of Joplin?
A. Yes sir.
Q. How long have you resided there?
A. About twenty-four years.
Q. Are you acquainted—are you connected in any way with the *city electric light plant here?*
A. Yes sir.
Q. What is your connection?
A. On the electric light board.
Q. How is that board appointed?
A. By ordinance of the city I think.
Q. Who were the other members of the board?
A. Judge Trigg, and Mr. Wadleigh and myself.
Q. Were you members of the city council?
A. When?
Q. When you were appointed on that board?
A. No sir.
Q. Were your duties defined by the ordinance to which you refer?
A. As I understood it, the cause of the election was to have a non-partisan board.
Q. To take charge of constructing electric light plant in the city?
A. I didn't know anything about that until after I was appointed.
Q. You, as one of the members of the board, together with the board, looked after the matter of constructing the electric light plant in this city, didn't you?
A. Yes sir.
225 Q. When did you begin that work?
A. I could not tell that without my book.
Q. When did you finish the plant?
A. Some time last year in the fall.
Q. Did you erect in connection with that plant poles, and on the poles string wires?
A. Yes, sir.
Q. Did you erect lamps for public lighting?
A. For city lighting, yes sir.
Q. Did you also engage in the business of making contracts with citizens for lighting business places or dwellings?
A. I think we instructed our superintendent of that fact.
Q. Was the superintendent under your direction as a board?
A. Yes, sir.
Q. Who was that superintendent?
A. The first one,—I can't think of his name; but the one that did most of the work was Mr. McDonald.
Q. After you had established your city lights, you then commenced to supply citizens with commercial lights?

A. In a small way we did, we didn't have power enough to supply very much.

Q. Why didn't you?

A. We didn't have machinery to do it.

Q. You adopted a schedule of rates for private consumers?

A. Yes, sir.

Q. Who adopted that?

A. I think the board, together with the city lighting committee.

Q. While you were constructing this plant, you found on the streets of this city the poles of the complainants, the Southwest Missouri Light Company?

A. Yes, sir.

Q. Did you locate your poles and lights on the same street?

A. Not necessarily; we went where we thought would be most advantageous to us.

Q. You covered the same territory in the city that they had previous to that time covered with their lights?

A. Probably so; our system was different though.

226 A. And after you had got the city lighting started then your superintendent proceeded to make contracts with residents and property-owners in the city for the purpose of supplying commercial lights?

A. As far as we had machinery to carry it.

Q. How many contracts had you made prior to the granting of the injunction in this city?

A. Not very many. We had not the power and we were putting in city lights all the time and we didn't know how many we would put in. Those places most adjacent and convenient to our line we tried to make arrangements to furnish them with lights.

Q. At that time the Southwest Missouri Light Company was engaged in the business of furnishing commercial lights and had ceased the furnishing of public lights?

A. Yes sir, the city lights.

Q. In so far as you had progressed in furnishing commercial lights, you had placed your company, the city company, in competition with the complainant company? That is, you were consenting to do the same lighting they were doing?

A. I guess so; the citizens were coming to us and complaining about their lights.

Q. And you, as this committee, recognized their request and permitted your president to put lights into their places of business?

A. Yes sir.

Q. You kept on doing that until the injunction was served in this suit?

A. Yes sir.

Q. What was the cost of the plant erected in this suit?

A. About $36,000 I think all told.

Q. You exceeded the amount received for the bonds that were voted for that purpose?

A. Not right at that time, but we had to furnish some other stuff for the city which required more indebtedness; I don't think we

exceeded our limit very much at that particular time although the bills and contracts were not all filled at the time. The city was applying for lights all the time and we were trying to furnish it. I don't think the board ever made any effort after we found we
227 were going to have trouble with the commercial lighting.

That is all.

Cross-examination by Mr. MONTGOMERY:

Q. How long, Mr. Fillmore, did you say you had resided in Joplin?

A. I think about twenty-four years; been here longer than that in business.

Q. What business are you engaged in?

A. Lumber business.

Q. What is the firm name?

A. L. A. Fillmore & Brother.

Q. Was you here when the first gas company was built?

A. Yes sir.

Q. Do you remember about the year it was built, Mr. Fillmore?

A. No sir, I don't believe I do.

Q. About how many years ago was it?

A. I would guess about twenty years.

Q. About how much did their plant cost that they put in—the first one?

A. It was quite a small plant when they first started out.

Q. You don't know about how much it cost?

A. I do not.

Q. Well, now, how was the city lighted? That was the first city lighting that was done, wasn't it?

A. Yes sir.

Q. And from and after that the city was lighted by gas for a number of years, was it not?

A. Yes sir, I think I was in the council about that time.

Q. Then the franchise was granted to Sergeant?

A. The first one was.

Q. Then after that, who furnished street lights?

A. Sergeant furnished them, some of them, and I believe the gas company put in a plant in connection with the gas works about the time or just before the Merchants' Electric Light plant was established, but they didn't do much with that. I don't think the gas company ever did any public lighting.

Q. I mean the gas company with their gas lamps?

A. Oh, yes, they did the lighting then.

Q. For a number of years the gas company lighted the
228 city with gas?

A. Yes sir.

Q. And then Sergeant got the contract, and he and others under him has lighted the city ever since?

A. Yes sir.

Q. With electric lights ever since?

A. Yes sir.

Q. You may state whether or not the Sergeant plant was first erected in the city?

A. I don't know whether it was or not; I think at first it was located in the city, but I am not positive about that.

Q. You remember the circumstances of the granting of the franchise to the Freeman Company?

A. Yes sir; I heard it a good deal talked of.

Q. By the Freeman Company we mean the Merchants' Company. Where was the power or electricity generated when the Freeman or Merchants' franchise was granted?

A. At the Grand Falls.

Q. About how far is that from the city of Joplin?

A. About four miles, I think, that is from Seventh street,—perhaps five miles.

Q. This current of electricity was generated through and how transmitted to the city?

A. By poles and wires.

Q. You may state, Mr. Fillmore, whether or not that condition of things was entirely satisfactory at that time?

I object to that as wholly incompetent, immaterial and not the issues in this case.

A. I don't think it was entirely satisfactory.

Q. What was the trouble at that time from lighting from the Falls?

I object to that for the same reason.

A. There was not power sometimes on account of weather and conditions, I suppose. I don't know much about that.

Q. You remember the circumstances of the purchase of the Merchants' or Freeman Light Company by the Southwest Company?

A. Only what I saw in the papers and heard talked in the council.

Q. Well, you remember of the purchase?

A. Yes sir.

229 Q. After this change was made, you may state what sort of street lights the Southwest Missouri Light Company furnished to the city after they purchased and bought out the Freeman Company—whether they were satisfactory or unsatisfactory—whether subject to stoppages or not.

I object to that for the same reason above assigned.

A. They were all right for a while but they kept getting poorer and less reliable for some reason.

Q. Detail to us what the trouble or matter was.

A. Some trouble as to their machinery or power lacking; I know in my own immediate vicinity the light was out a good many times.

Q. How was it during times of storms?

A. During storms it was worse apparently than at other times.

Q. When the Freeman's or Merchants' plant was first built where was that built, Mr. Fillmore?

A. On Mr. Freeman's foundry.

Q. The plant was built by that company in the city. State whether or not it remained in the city until the time of the sale by Mr. Freeman or by the Merchants' Company to the Southwest Company.

A. Yes sir, until the transfer was made and then it went to the Falls.

Q. You remember the circumstances as reported?

A. Yes sir, saw it in the papers and heard the general talk.

Q. After this sale, about how long was it until the plant was taken away, after it was taken away from Joplin?

A. It was taken away by piecemeal I think. I don't know how long it was after the transfer was made until it was entirely abandoned. Some little time, I think.

Q. During the time that the Merchants' or Freeman Company operated you may state whether or not you had any written contracts or other contracts to furnish light for a time extending beyond the time of this sale?

I object to that as immaterial, incompetent and not the issues in this *sale*.

230 A. I was building a residence at that time and had the light of the Southwestern in my office ever since it started and it was not satisfactory and Mr. Freeman put a light in my office and also lighted and wired my residence and I made a contract with him.

Q. Then you say that you had a contract with him the time of which was extended beyond the sale of the Merchants' Company to the Southwest Company?

A. No, I don't know what the contract was. It was a verbal contract, he was to furnish my lights for so much and I bought the meter from him.

Q. State what the arrangement was.

A. We agreed on a certified price, I don't remember what it was. I put in I think sixteen lights in my house.

Q. He made you this rate?

A. Yes sir.

Q. Sold you the meter?

A. Yes sir.

Q. How long was it agreed that this contract should run, Mr. Fillmore?

I object to that as incompetent.

A. I don't know as any particular time. He said that would be the rate and I suppose as long as the Merchants' run.

Q. Well, now, after the sale of the property of the Merchants' Company to the Southwest Company, did you have any talk with the superintendent of the Southwest Company about this matter, and if so, just tell us what he said?

A. I don't know whether it was Mr. Pilgrim; I think it was. It run along at the same price for several months, after they took possession, although the light didn't seem to be near as good and I was kicking a little on the light and especially on the renewals, extra lamps they would break and the light was not so good as when Mr. Freeman was running it from his plant; then the price kept coming up; it never had been at that time I think over a dollar for what I burned by the meter rates. I was burning the same lights under the same conditions and I think they kept raising on the price and finally I suggested that they were charging
231 too much and objected and they said they could not run that many lights for that amount of money. Says I, "Make a price so I will know what I have to pay." He would not take the meter rates and made it what he called a two-dollar flat rate, for a certain time. I paid that for quite a while, and then after a while he wanted more money, $2.50; I don't remember whether it was Mr. Pilgrim or the man superceding him. I paid that for a while, and then they raised again; finally I asked him why they kept charging more and he claimed they changed the lines some way, and I paid that for a while, and then it got to $3.00 and more since and I still kept kicking, and then they took my meter out and took it downtown and brought it back and still it kept raising in price until I believe the last bill was $6.40 or in that neighborhood and I refused to pay it. That was under Mr. Bayne's administration, I think. Finally it run along for a month or two and I didn't pay any one. He says, "I want to settle this trouble and fix this thing up;" says I, "All right Mr. White, I want to pay for what I get but I don't want to pay any more." He says, "If you will pay up the old bill, I will make you a compromise rate." Says I, "If you will make it the same as the Freeman rate, all right, if not, I will go without light or run the gas light I have in my house." He said, if I would take a nest of eight lamps, he would make that $2.00 and every additional lamp would be 25c. Says I, "That is the same as the Merchants' rate" so he says, "I will buy your meter and pay you what you paid for it." I believe I paid $16. He told me I would have to cut all the lamps out and fixtures I didn't use in my house and he left ten in my house at $2.50 and I put one in my barn since then, and am now paying $2.75 for the lights with the Southwestern Company.

Q. During the time of this controversy, was there anything said between you and the superintendent about what franchise they were operating under?

I object to that for the reason it is incompetent and immaterial and the superintendent is not shown any power to bind the complainant.

232 A. They threatened to cut out my lights and I asked my attorney if they could; he said, make a tender of the money you think is right; I told him about the Freeman contract; I went to find out what franchise they were working under, whether the Freeman or the Sergeant.

Q. Did you go under his suggestion to the superintendent of the light company and have any talk with him?

A. Yes, sir; I asked him what franchise they were working under.

Q. Do you remember what superintendent it was?

A. I think that was Mr. White, about the time I was having the trouble with the larger bill.

Q. You may state whether he would admit to you or tell you. Did you ask him if he was operating under the Freeman franchise?

A. Yes, sir; I asked him.

Q. Then in answer to your question, he would not admit that he was?

A. No sir, not to me; and we made that compromise and when I paid him, I says "This is the Merchants old price; the contract I made with Freeman."

Q. In all your conversation you were seeking to get them to admit that they were operating under the Freeman contract and you say in none of your conversations they would admit they were operating under that franchise?

A. No sir; they never admitted it. My attorney told me to find out.

Q. State whether or not you put the question in that way practically whether they were operating under this franchise or not?

A. Yes, sir; as near as I could.

Q. Would they admit they were?

A. They never would admit anything of the kind.

Q. What do you say as to the regularity of the lights from the time Freeman sold out up to the time of the voting of the bonds about the lights being steady?

I object to that as immaterial and incompetent.

A. The lights were never anywhere near as good; at times
233 it was all right other times there would be scarcely any.

Q. What do you say about the value of street lights that were as those lights were?

Object to that as wholly immaterial and incompetent under the issues in this suit.

A. It made my gas bill more and I was paying for electric light.

Q. These street lights,—what do you say about whether they have any value as street lights; that is invaluable and will go out and you can't depend upon them?

I object to that as incompetent and no issue in this suit.

A. If you want a light you want it regular. These were irregular and would go out and they didn't seem to fix them.

Q. This unreliable and bad condition of the street lights, how long did they continue—did it continue up to the time of their service?

A. It kept getting worse all the time.

Q. Do you remember the day when the Southwest Company quit furnishing lights?

A. No sir, I don't know.

Q. Was there a time after they quit up to the time of the starting of the city lights that we had no lights?

A. Yes sir, we made a contract to furnish lights up to a certain date and after that time we could not make any contract. I went to Mr. Parsons, the superintendent, and told him then we didn't wan't to erect any light and I went to Mr. Cunningham, and asked him to quit signing the bonds that we didn't want to put up the plant even then. I had most of the erection of the plant to look after myself as Mr. Wadleigh was very busy, and I didn't want to do that if we could make any contract with the Southwest Electric Light Company, but they would not take any bid that was reasonable.

Q. You went to Mr. Parsons to get him to furnish some satisfactory lighting to abandon city lighting?

A. Yes sir, we didn't want to build the plant; I was rather opposed to a municipal plant in my own mind.

234 Q. What was the cause of its being built?

A. We were compelled to do it. They would not entertain a bid even. They said they would not furnish it at what they had been or anywhere near it.

Q. Well, was anything ever said about their power to do the lighting of the city?

A. Mr. Parsons didn't, but Mr. White, in conversation before this occurred, said they didn't have the power.

Q. They didn't have the power to furnish the lighting of this district?

A. After our contract run out, while we were building our plant, Mr. Parsons said they didn't have the power to run what they had already been running, and they had rather do the commercial lighting than the city lighting.

Q. Then you may state whether or not they declined to entertain the proposition to do the city lighting and in that connection whether or not they had the power to do that?

A. They declined so far as we was concerned. They said they could not do it.

Q. Did any other member of the company explain to you anything about the lack of power to do the lighting of the district here?

A. When Mr. Myers was here we talked some as a board, and I don't know as he said verbatim that he didn't have the power, but he intimated that much. That is the way we interpreted it anyway.

Q. Did the Southwest Missouri Electric Light Company take any steps to increase their power before the voting of the bonds or starting of this city plant?

A. Not that I know of.

Q. Do you remember what month they started their plant at the Falls?

A. No, I don't remember the month.

Q. You remember they gave a kind of party when they started it?

A. Yes sir.

Q. Then they had contracted an additional smaller plant?
A. Yes, they put up quite an addition.
Q. But this was before that steam plant was built or operated?
235 A. Yes sir.
Q. Then, Mr. Fillmore, as I understand you, the reason of the city building her plant was not because they wanted to build a plant, but because they could not get light from the Southwest Company?
A. Yes sir, I think the matter was brought up in the club here and it was because we could not get enough light and good light and we were compelled to do something.
Q. How long did this bad lighting continue after they bought out Freeman?
A. About three years.
Q. During all this time there were representations made to have them better these conditions?
A. Yes sir.
Q. Did they ever make any move to make it better?
A. I think not.
Q. You are not a Populist then—you don't believe in municipal ownership?
A. No sir, I was opposed to it.
Q. Yet you say you was one of the parties who moved in the building of the light plant?
A. Yes sir.
Q. You are a member of the club?
A. Yes sir.
Q. What is that club?
A. It is what they call Business Men's Club.
Q. Well, what do you say about their commercial lights during the time these street lights were bad from the time of the purchase of the Freeman plant in '96 down to say 1899,—three years?
A. They were about the same as the street lights; they would be entirely out sometimes; I know I had to have gas in my office.
Q. You may state during the three years '96 to '99, whether or not The Southwest Missouri Light Company, the complainant in this case, furnished adequate and sufficient electric lighting to supply the demand for street lighting or commercial lighting in this district?
A. I don't think the light was good at all any of the time. There were times it would be irregular; could not read by it at all.
Q. Since the installation of the city plant and the starting of it, state whether the city lights are the same as those were?
A. They are a good deal better.
236 Q. Are they satisfactory lights?
A. They seem to be,—yes sir. I will state that their commercial lighting is a great deal better. The Southwest Electric Company is a great deal better than it was.
Q. When did that improvement begin?
A. After the improvement of the creek at the Falls.

Q. In the fall of '99?
A. Yes sir.
Q. Now after you started the city plant, state whether or not the city purchased a lot of supplies, such as transformers, and other supplies peculiarly adapted to commercial lighting?
A. Yes sir.
Q. About how much did that amount to?
A. I don't know as I can tell that; we have four circuits and each circuit is intended for so many lights, each street having from twenty-five to thirty lights and the transformers have to conform with the number of lights.
Q. First, I understand the transformer is something which permits you to put an incandescent light and an arc dynamo?
A. Yes sir.
Q. Before this injunction, did the board purchase a lot of supplies which were only useful to commercial lighting and that you could not use in other business?
A. We didn't make any calculation on that so far as supplies were concerned. Only in our immediate vicinity where they were kicking for better lights, where our transformers were—several of them bought their own transformers. We only had a little power to spare in that line.
Q. Did you prepare a schedule of prices?
A. Yes sir.

Witness shown a copy of the light schedule and he identifies it as being the schedule as adopted.

Q. When you built the light plant and when you started it, and during all the negotiations leading to it, you may state whether you or any member of the board to your knowledge had any intention or ever expressed any idea of building the run out or
237 injure the Southwest Missouri light plant?
A. No sir.
Q. State whether or not the only purpose was to secure good lights to the city, and to do some commercial lighting to pay for the expense of running the plant?
A. I told Mr. Myers that I thought there was lighting enough here for both the plants and we didn't care particularly about the commercial lighting.
Q. Did you or any member of your board, to your knowledge, have any intention of running the plant for the purpose of doing any other business than a legitimate competition and fair rates for supplying commercial lighting?
A. I don't think the board as a board had much of an idea of doing much commercial lighting. Our chief effort was to give good city lights.
Q. Was there any purpose of your board to put this plant at a ruinous low price?
A. No sir, we talked it over and got the board to make a schedule with the Southwest Missouri Light Company. We didn't want to

do commercial lighting at a loss. They refused totally to do the city lighting and that was why we built the plant mainly.

Q. Now, Mr. Fillmore, the city of Joplin, during the time this plant was being contracted by the city, how many population had we than, as near as you can remember?

A. I believe we had more than we have now.

Q. The last census shows us to have 26,023.

A. At that time they were larger than they are now. We made a rough estimate that we had 30,000 people to be supplied with light.

Q. I believe the decision of the supreme court invalidated the extension that we then had?

A. Yes sir, that was it.

Q. Afterwards the city was extended but the limit was curtailed within the limit boundary?

A. Yes sir.

Q. After the limits had been extended, you say about how many inhabitants in the city?

A. I think 30,000.

238 Q. What kind of industry abounds here?

A. Mining.

Q. You may state whether or not Joplin is recognized as the center of the mining industry in this locality.

A. Yes sir.

Q. About how much population in this mineral belt, adjacent and tributary to Joplin that come here and trade here and are here largely, about how much population?

A. You don't include Webb City, and Carterville? Well, I suppose 50,000 tributary to Joplin one way and another.

Q. You remember when the lights were turned off by the Southwest Missouri Light Company, and no arrangement could be made with them what conditions were set up here just about the time those lights were turned off as to robbery, etc.?

I object to that as wholly immaterial and for the reason it appears that the lights were turned off after the contract had expired and long after the city had commenced the erection of its plant.

A. We made arrangements after the contract for lighting the city had expired for a certain length of time.

Q. Do you know whether the Southwest Missouri Company commenced that contract—recognized that contract that was in force with the old company that they succeeded?

A. I don't know.

Q. Tell us what the conditions were here.

A. Well, we were having considerable of a boom, a great many strangers here——

Q. After the lights were turned off as to highway robbery, at nights?

A. It was almost dangerous to go home after dark.

Q. Did that set up almost immediately after the lights were turned off?

A. Yes sir.

Q. State whether or not there was a number of people killed in these midnight robberies at that time.

A. It was a very common occurrence for people to get robbed going home. When we went to club three or four of us would always go home together.

Q. During these three years when you say the lights were
239 bad, you may state—that is, after the purchase of the Freeman or Merchants' Company, you may state whether or not this matter was discussed by the council.

A. Yes sir, it was.

Q. Were you present at any of those discussions at the council?

A. Not very much; there was a great deal of discussion about a light out on 14th street.

That is all.

Plaintiff moves to strike out and exclude from the evidence anything offered on cross-examination of this witness relating to the condition of the lights furnished for commercial purposes for the reason that it is wholly incompetent and immaterial and for the further reason that the city might have by action *and* enforced the compliance if there was a failure to comply with the provisions of the contract between the city and the complainant company.

Plaintiff moves further to strike out all testimony offered with reference to the conditions of the city lights for the reason that this controversy in no way relates to the city lights, and that such testimony is wholly incompetent and immaterial to the issues in this suit.

Complainant moves further to strike out all testimony elicited upon cross-examination with reference to failure on the part of the complainant to enter into a contract to furnish lights for the reason it is shown by the record evidence therein that the contract with the complainant to furnish the public lights to the city did not expire until May 1st, 1899, and was thereon extended until September 1st, 1899; that proceedings were taken on February 8th, 1899, by the city to erect the aforesaid city plant. That an election was held and proclamation made thereafter and on March 2nd, the bonds of the city ordered issued to pay for the construction of said plant, and said plant ordered to be sold on March
3rd, 1899, and for the further reason as is shown by
240 the record evidence herein, on March 22nd, 1899, the witness and others were appointed to carry out the provisions of said ordinance regarding the construction of said plant for the further reason as is shown herein on May 9th, 1899, the committee of the council, of which witness is a member, recommended the extension of the contract with the complainant, herein, for four months, which recommendation was accepted and the contract made on the same terms as the original contract, causing the city lights furnished by complainant by agreement to expire on September 1st, 1899.

Redirect examination—Mr. EATON:

Q. Mr. Fillmore, as shown after you were appointed one of this committee, did you begin operations for the construction of this new plant for the purpose of chiefly furnishing lights for the city?

A. I think after a couple of weeks we took a trip to St. Louis to see what we could learn in the way of plants.

Q. When did you let your contract?

A. I don't remember.

Q. Was it before September 1st, 1899?

A. I could not say.

Q. Don't you know as a matter of fact that it was made within three months after you were appointed as a member of such committee?

A. I think it was.

Q. When your contract had been let to construct a city plant the extension agreement with complainant company had expired?

A. Yes sir.

Q. When you went to complainant company to get it to furnish city lights you had already let a contract for the purpose of lighting the city?

A. Yes sir.

Q. How do you explain that you were opposed to building a city plant and was in favor of making a new contract with complainant company at a time when the contract with complainant company had not expired?

A. I didn't do that.

Q. These negotiations which resulted in a refusal of the complainant company to enter into a contract with the city must have occurred after this contract had expired?

A. I didn't say so.

241 Q. You had an extension of four months?

A. Yes sir.

Q. You made it with a view of having your own plant built in the city for furnishing city lights?

A. Yes sir.

Q. You did not have any light when it expired, when these murders and robberies were going on?

A. No sir.

Q. Your council seems to blame this company for these things—do you see any justice in that?

I object to that as calling for a conclusion of the witness.

A. I don't see any justice in blaming them for those robberies and murders; we had no light about that time.

Q. You are not blaming the Southwestern because you had no light?

A. We tried to have the contract extended further but couldn't.

Q. When?

A. After the time it had run out or about the time the four months had expired.

Q. At that time you was pushing the building of your plant?
A. Yes sir.
Q. Don't you suppose that you—or that the fact that you expected just as quick as you made another extension and completed your plant by which you expected to furnish city lights that that would have something to do with their entering into a contract?
A. They refused to enter into it.
Q. Don't you suppose that the refusal was based on that fact?

I object to the supposition of the witness.

Q. Was there anything in the negotiations with Mr. Myers or Parsons in which he stated or suggested,—or in which it was stated or suggested that you would simply have those lights until you get your city plant built?
A. Yes sir.
Q. And their refusal was to furnish you lights until you could get your plant done?
A. Yes sir.
Q. That is the only refusal you are talking about?
A. Yes sir.
Q. This company was engaged in putting in a large auxiliary steam plant at the Falls were they not?
A. Yes sir.

242 Recross-examination—Mr. MONTGOMERY:

Q. You spoke of having seen the superintendent and Mr. Myers and talking with them some time before the city plant was started and their saying something about they didn't have power enough. What was their statement about that?
A. I understood the superintendent to say they didn't have the power.
Q. You went to him as a representative of the city to have him give us better lights and he said they couldn't because they didn't have the power?
A. Yes sir.
Q. Was there any effort made to furnish better power until the city had begun to build theirs?
A. No sir.

Redirect examination—Mr. EATON:

Q. Do you remember the meeting of the Joplin Club in which Mr. Evans introduced a resolution to require the water company to proceed to rebate the complainant's dam at the Falls?
A. Yes sir, there was a talk of that kind.
Q. To be frank about it the club and the council was after this complainant both to the extent of getting their lights, building their own plant and rebating their dam at the Falls?

I object to that and move that that part regarding the dam be stricken out as it is no issue in this case.

A. No sir. L. A. FILLMORE.

Subscribed and sworn to before me this 21st day of January, A. D. 1901.

My term expires January 3rd, 1903.

BECCA EDWARDS,
[SEAL.] *Special Commissioner.*

243 J. W. FREEMAN, of lawful age, being produced, sworn and examined on behalf of plaintiff, deposeth and saith as follows:

Direct examination—Mr. EATON:

Q. Are you the Mr. Freeman mentioned in the deed of transfer which I now hand you heretofore introduced in evidence and signed J. W. Freeman, president Merchants' Light & Motor Company, dated June 19th, 1896? Are you that Mr. Freeman?

A. Yes, sir.

Q. You are the same Mr. Freeman mentioned in the ordinance No. 441 granting to yourself and others a franchise in the city of Joplin to furnish electric lights?

A. We got a franchise, I don't remember the number of it.

Q. Did your company or association proceed under that franchise to build works in the city?

A. Yes, sir; we built a plant under that franchise

Q. You first accepted the franchise did you not, you and your associates or company?

A. I think so.

Q. What did you do towards erecting a plant in the city, did you establish machinery?

A. We put in machinery and dynamo, lamps, arc lamps and incandescents.

Q. Did you put in a system of commercial lighting?

A. Yes, sir. We had no city contract.

Q. Before you went on with your system and established the commercial lighting and carried it on you and your associates, who afterwards became incorporated, until you sold out to the complainant, The Southwest Missouri Light Company?

A. Yes, sir.

Q. In respect to what you did towards erecting your plant, etc., you did in accordance to your ordinance that granted this franchise?

A. Yes, sir.

Q. Did you have any complaints with the city that you
244 had not complied with the ordinance in constructing and putting in your plant?

A. I don't think we did.

Q. Now you never got the public contract for lighting the city then did you?

A. No, sir we didn't get it.

Q. It was after you had sold to the complainant that the contract was made with it and the city?

A. No the contract was made with the city while we were running our plant; they changed their name.
Q. Why did they change their name?
A. Changed it by a trustee sale on account of a mortgage.
Q. In doing that work and completing that line, you built pole lines here in the city?
A. Yes, sir in the streets and alleys.
Q. Are the same ones now operated by the Southwest Missouri Light Company?
A. I don't think there is any of them left. They have taken them out. Took down the main line and transferred the wires on their poles, on their old line of poles.
Q. They changed your line that you contracted on to the poles that they had that was involved or used in connection with this five-year contract?
A. Yes, sir.

(That is all.)

Cross-examination—Mr. MONTGOMERY:

Q. You lived in Joplin did you not, Mr. Freeman?
A. Yes, sir.
Q. About how many years?
A. Eleven years.
245 Q. What is your business?
A. Foundry and machine works.
Q. Did you live here when in business — somewhere else?
A. Yes, when in Belleville or Zincite.
Q. What was your business there?
A. Mining and machinery.
Q. You was president of the Merchants' Company?
A. Yes, sir.
Q. It was afterwards incorporated?
A. Yes, sir.
Q. That is to say the property of the individuals was conveyed over to the corporation after it was formed?
A. Yes, sir.
Q. You was president and principal stockholder of the Merchants' Light and Motor Company?
A. Yes, sir.
Q. You folks, when did you commence building that—in '91 wasn't it?
A. I think so but I don't remember exactly.
Q. When you got your incorporation you bought your pole line from the Joplin Gas & Coke Co., did you not?
A. Yes sir.
Q. This was the old Joplin Gas Company, that had lighted the city by gas way back from '78 and has been in business ever since, has it not?
A. Yes, sir.

Q. And some time before you were incorporated they got a franchise from the city to do electric lighting?
A. Yes, sir.
Q. Then you bought their pole line?
A. Yes, sir.
Q. That was the basis that you started to work from on your pole line?
A. Yes, sir.
Q. Do you remember what that cost you?
A. The pole line?
Q. Yes.

I object to that as wholly immaterial and not the issues in this case.

A. It seems that the whole line and incandescent dynamo cost about $2000.

Q. At the time you started your company there was no
246 electric light company operating here?
A. Yes, sir.
Q. Also a gas company doing commercial lighting with gas?
A. Yes sir.
Q. And this other electric light company was called the Southwest Electric Light & Water Power Company?
A. I think at that time it was the Southwest Electric Light & Water Power Company.
Q. Now I believe you stated in answer to Mr. Eaton's question that you bought this pole line and dynamo for $2000 and then added to that so as to make your pole line?
A. Yes, sir.
Q. What else did you buy?
A. Bought an arc dynamo and lamps and other things necessary.
Q. And constructed a brick building here?
A. Yes, sir something over 100 feet.
Q. And the ground on which said building stood and the boiler and the engine?
A. Yes, 150 h. p. tubular boiler and 125 h. p. Corliss engine.
Q. Well, this arc dynamo, what was that worth, besides the dynamo you bought at the gas Co.?
A. $150.
Q. The engine and tubular boiler—about what was that worth?
A. About $3000.
Q. Then you say you made extensions to your pole line?
A. That was done at different times; I don't remember what that was.
Q. Then you bought in supplies or other appliances, lamps, fans motors, etc.?
A. Yes, sir.
Q. About how much?
A. I don't remember; there was quite a lot of it.
Q. So the whole plant cost you about how much, Mr. Freeman?

A. I don't just remember now.

247 Q. From the time you contracted this plant you mentioned, state whether or not it was constructed and operated in the limits of Joplin and down close to Main and Fourteenth streets?

A. Fourteenth and Joplin.

Q. Main street is the principal street in the city?

A. Yes, sir.

Q. After you sold out Mr. Freeman to the Southwest Missouri Light Company what was done with this plant that you folks constructed in the city under your franchise?

A. It was run for a short time.

Q. About how long was it run?

A. I think three or four months.

Q. Well then after they run it for about three or four months, what did they do?

A. They took part of it away; in fact they took it all away at different times and furnished the light from the Falls.

Q. Was this plant torn down and dismantled?

A. Dismantled—yes, sir.

Q. And the machinery moved away from the city?

A. Yes, sir.

Q. State since that time, along in the fall of '96, I believe the sale was made in June '96.

A. Yes, sir.

Q. Since the fall of '96 state whether or not the Southwest Missouri Light Company or any one else has operated and maintained a plant for the purpose of developing electricity in the city?

I object to that as wholly immaterial and incompetent, there being nothing requiring the maintaining the power in the limit of the city in any of the franchises or contracts.

A. No, sir.

Q. Has any one maintained and operated a light plant within the city or within its suburbs for the purpose of supplying street

248 lighting to the city.

A. Not until the city plant was put in.

A. Along in February, 1900?

A. Yes, sir.

Q. Did this company get the building and ground or engine, Mr. Freeman?

A. No, sir.

Q. What became of that?

A. I got that.

Q. You put it to other use?

A. Yes, sir.

Q. The engines or the buildings and grounds that formed a part of this plant have been used for other uses, has it not?

A. Yes, sir.

Q. After that you put this boiler and engine in and used it as a part of the foundry and machine shop didn't you?

A. It stood I believe for a long time and we used the building for a warehouse and then we used it as a part of the foundry.

Q. Before the sale of the Merchants' property to the Southwest Light Company Mr. Freeman, state whether or not a lot of contracts were entered into by your company with various individuals to furnish lights in the city?

A. Yes, sir we had several written contracts with different customers here on Main street in the city of Joplin.

Q. State who some of those contracts were with.

A. I think one was with the Keystone hotel, Mose Weyler, Leonard Dry Goods Co., Christman & Bliedung, House of Lords, Lee Moore.

Q. At the time of the sale you may state whether any one on behalf of the Southwest Missouri Light Company made any statement in regard to those contracts with you.

Object to that as incompetent, immaterial and for the further reason that the contract regarding this sale is in writing and oral testimony cannot be introduced to vary or contradict its terms.

249 A. My recollection was they were to carry out these contracts.

Q. Do you remember who made this statement on behalf of the Southwest Company?

A. Mr. Densmore.

Q. Was he the man who negotiated the purchase on behalf of the Southwest Company?

A. Yes, sir.

Q. And was it during these negotiations that he made this statement that he would protect them?

A. Yes, sir.

Q. Now after the sale you may state whether or not they carried out these contracts or not.

Object to that as incompetent, immaterial and for the reasons above stated.

A. There was some complaint made to me about they not carrying the contract out by different ones.

Q. After you sold out to them and the plant had quit running, along in September of '96 what do you know about whether they had power enough to run the lights that you had and the lights they had?

I object to that as wholly immaterial.

A. The lights were often out and they didn't have power enough to run them.

Q. What was their source of power at that time?

A. Water power at the Falls and they had a small steam plant.

Q. Located where?

A. At the Falls.

Q. Were the two sufficient to run all the lights that you transferred to them and that they had before the transfer?

A. No, sir.
Q. Did you go down there at any time in regard to this failure of power?
A. Yes, sir I was down there several times at the instance of the superintendent and then when the deal was made I was to look after the business in general.
250 Q. From this failure of power and other reasons what kind of street lights did we have, Mr. Freeman? After you sold out?
A. They only burned part of the time.

I object to the question and answer as wholly immaterial; street lights not being involved in this question.

Q. What would you say about dark, bad nights when street lights were needed more than any time?

I object to that for the same reason.

A. As a general thing they were usually out when worst needed.
Q. Well now, when they did burn what sort of light did they give, Mr. Fre-man?

Object to that for the same reason.

A. A dim light.
Q. How about the lights being steady or flickering?

Object to that for the same reason.

A. They were very unsteady.
Q. Now you can state, Mr. Freeman, whether the Southwest Missouri Light Company made any move or did anything to improving their power or service until after the voting of the bonds to build a city light plant that you know of?
A. I don't remember the time the improvement was made.
Q. How about commercial lights that they supplied during three years from the time you sold out until the city plant was started?
A. Very unsatisfactory.

I object to that as stating a conclusion.

Q. In what way was the commercial lights unsatisfactory?
A. Their incandescent light was not up to candle power.
Q. Did they burn always?
A. Were out a great many times.
251 Q. What would you say as to being a reliable light?

Object as wholly immaterial and not the issue in this suit.

A. I would not consider them very reliable lights.

Redirect examination—Mr. EATON:

Q. Mr. Freeman, this Mr. Densmore of which you speak is now in employ in connection with the city company isn't he?
A. No sir he is a man that Mr. Stillwell sent down from Kansas City.
Q. Is it W. E. Densmore?

A. I don't remember his initials.
Q. Is he here now?
A. No, sir.
Q. You made this written contract of sale yourself as president of the company?
A. I don't know. *A.* They brought up some and then we changed them.
Q. Densmore was here while these negotiations were going on?
A. He *am*de several trips.
Q. That is when these talks occurred about these contracts or these individual contracts you named?
A. Yes, sir.
Q. Finally when they bought you out they drew up and closed a written contract in which you named the consideration of $15,000?
A. I am not sure but it seems to me one of the written papers stated they were to carry out these contracts.
Q. You haven't any such paper?
A. No, sir.
Q. Was there any occasion for any other paper than that one in order to close that deal say if there was anything in there that was to be sold or bought that is not described.

(H*na*ding witness contract June 9th, 1896.)

252 A. This was just a memorandum of what we had that Mr. Densmore took with him to show to the company, as I understand him, and there was two or three or four papers; that was an outline of what we had.
Q. Mr. Freeman it appears to be an instrument of conveyance signed by you as president of the company and acknowledged by you?
A. There is more papers than that.
Q. This was a deed transfer-ing the property; look at it again and see if you think it is not a deed or just a list of what you had?
A. It just described what we had. (Reading.)
Q. You know what a deed is when you see it, do you not—bill of sale then if you want to call it—you still after hearing it read, insist that it is a mere memorandum of what you had to sell?
A. Yes, sir it went to Kansas City and it was not signed up until after the other papers were drawn and all signed up together.
Q. There was a role of stock that you turned over wasn't there? Shares of the Merchants' Light Company?
A. We turned over all of it and books and stocks; that was one of them. My recollection is there was a contract about the operating our plant here in town for the time.
Q. And then you were employed to go down and look after the running of the plant at the Falls?
A. Yes, sir and here at the office.
Q. Employed as general manager?
A. Yes, sir.
Q. Had a contract?
A. I don't remember whether it was a written contract or not.

Q. How long were you so employed?

A. I think it was most of the balance of that year '96.

253 Q. This light that you had in front of your foundry about that time you took it out and put it into the center of the street?

A. It was some time before that.

Q. You put that light at the intersection of the street instead of the front of your entry?

A. Yes, sir at Fourteenth and Main streets.

Q. You hung it on poles the same as the others?

A. Yes, sir.

Q. At the time of your franchise that light was to be placed in front of your foundry?

A. Yes, sir on the front porch.

Q. How did it come to be changed out into the street?

A. Some of the council wanted it put out there.

Q. They didn't want a public light on private property?

A. We didn't get any pay for that.

Q. Intended for public use?

A. It was in the franchise to put on the front porch of the foundry there.

Q. A kind of concession to you?

A. It was an inducement to get the franchise.

Q. Lighted your foundry did it not?

A. Lighted the front of it.

Q. How far did they move it from your foundry when the city objected to keeping it there?

A. About 50 or 75 feet; a short didtance only.

Q. Hung it on poles?

A. Yes, sir.

Q. Who did that?

A. The city furnished the poles and our company put the light up.

Q. Mr. McDonald did it?

A. Yes, sir.

254 Q. He was one of your men wasn't he?

A. He was our superintendent.

Q. Then at the time you sold to the Southwest Company there was no light in front of your foundry on the porch?

A. By agreement of the council that light had been moved off of my porch.

Q. You say the company put the lamp up?

A. Put up the poles.

Q. Was the same lamp used or a different lamp put up?

A. We changed lamps whenever they got out of repair; I can't tell that.

Q. At the time you sold to The Southwest Company, complainant herein, you didn't have any light on the porch of your foundry? I so understood you a moment ago.

A. We had an incandescent there, we didn't have an arc light.

(That is all.)

Recross-examination—Mr. MONTGOMERY:

Q. Which do I understand you to say that you folks put that light there for—to light this crossing or to get the franchise?

I object for the reason that the counsel assumes that witness has said anything about the Frisco crossing.

Q. Mr. Freeman, in the franchise was this clause: "For one light erected on the front porch of Freeman's foundry so as to light the Frisco railroad crossing on Main street and to be kept in order without charge or expense to the city." Now you may state whether or not after you commenced operating whether the Merchants' Electric Light Company did maintain that on the front of their porch?

A. Yes, sir we had a light on the front porch of the foundry.

255 Q. That was the light put up in compliance with this franchise?

A. Yes, sir.

Q. Was there an arrangement made between you and the city afterwards?

A. Yes, sir.

Q. As I understand you the city thought this light would light the crossing better if it hung over the poles rather than on the porch?

I object; it calls for a conclusion of the witness.

Q. What arrangement was made by them with you in regard to maintaining this light to furnish light at the crossing?

A. We made arrangement to put the light on the pole instead of on the porch.

Q. You maintained this light up to the sale of the Southwest Missouri Light Company?

A. Yes, sir.

Q. Do you know anything about whether they maintained it after the sale, Mr. Freeman?

A. I don't remember exactly. I think though it burned when the other lights burned.

Q. Do you know anything about a resolution being passed or introduced into the council by Mr. Cline in September to have the fire, water and gas committee refer with the electric light company to see if they would maintain that light free of charge to the city?

I object to that.

Q. Do you know anything further of the report made by Mr. Moore that he had referred with the superintendent of the company and he had refused to keep it up?

I object to that as being wholly incompetent.

A. I don't remember.

256 Q. You never examined the records or was present at the resolution when Mr. Mason brought in a resolution asking for a light to be established on Fourteenth and Main streets?

I object to that as being wholly incompetent.

Q. Then you are not familiar with the refusal of that company to maintain a light there after you sold out along that fall and the next spring?

A. No, sir.

Q. Do you remember that petition by Mason?

I object as wholly immaterial.

Q. I will ask you if you was present when this resolution was offered on the 3rd day of September 1896?

"Adjourned session of the council.

Light on the corner of Fourteenth and Main was referred to by Cline and on his motion the matter was referred to the committee on fire, water and gas, with instructions to refer to the Southwest Missouri Light Company and ascertain whether they would maintain the light as had the Merchants' Electric Light Company in the past without cost to the city."

And were you not present when Mr. Moore, a member of that committee, made a report that he had conferred with the superintendent of the Southwest Missouri Light Company, and that gentleman informed him that the company was under no obligation to maintain a light at that place?

A. No, sir; I don't know anything about that.

(That is all.)

J. W. FREEMAN.

Subscribed and sworn to before me this — day of January, 1901.

BECCA EDWARDS,

[SEAL.] *Special Commissioner.*

My term expires Jan. 3" 1903.

257 (EXHIBIT "A.")

From the Joplin Daily News, April 18th, 1888.

Ordinance No. 106.

An ordinance surrendering the present special city charter of the city of Joplin, Missouri, and organizing under the general law as a city of the third class.

Be it ordained by the council of the city of Joplin:

SECTION (1). That the city charter and all acts amendatory thereof, enacted by the legislature of the State of Missouri for the government of the city of Joplin and now in force, be and the same are hereby surrendered, when ratified by the people as hereinafter provided.

SECTION (2). The mayor is authorized and instructed to issue his proclamation ordering a special election to be held at the usual voting places in the respective wards in said city on Tuesday May 8th, 1888, to vote on the proposition to surrender the present special city

charter and to organize under and by virtue of the general law as a city of the third class.

SECTION (3). The city clerk shall, as soon as the mayor's proclamation shall have been published, have the necessary poll books and ballots prepared for the special election herein provided for.

The ballots shall be as follows:

To surrender the special city charter of the city of Joplin, Missouri, and organize under and by virtue of the general law as a city of the third class. Yes—No.

SECTION (4). All ordinances and parts of ordinances inconsistant with the provisions herein contained are hereby repealed.

SECTION (5). This ordinance shall take effect and be in force from and after passage and publication.

Approved April 17th, 1888.

C. LIVINGSTON, *Mayor.*

258 Attest: JULIUS FISHER, *City Clerk.*

I hereby certify that the above is a true copy of a city ordinance of the city of Joplin, Missouri, published in the Joplin Daily News of April 18th, 1888.

H. L. CRITTENDEN,
Publisher Joplin Daily News.

Joplin, Mo. Jan. 30, 1900.

Subscribed and sworn to before me this 30th day of January 1900. My term expires Aug. 17th 1901.

[SEAL.] J. W. McANTIRE,
Notary Public.

259 (EXHIBIT "B.")

From the Joplin Daily News of May 10th, 1888.

Mayor's Proclamation.

Whereas, the city council of the city of Joplin, Mo., on the 18th day of April, 1888, passed an ordinance to surrender the special charter of said city, and organize under and by virtue of the general law as a city of the third class, and submitted the same to the legal voters of said city at an election held for that purpose on the 8th day of May, 1888; and that

Whereas, a majority of the legal voters, voting at said election ratified said ordinance by voting thereat to surrender the special city charter of the city of Joplin, Mo., and organize under and by virtue of the general law as a city of the third class,

Therefore, I, Chancellor Livingston, mayor of said city of Joplin do hereby proclaim and declare that by virtue of such vote the special charter of the city of Joplin aforesaid has been surrendered and that the city of Joplin is incorporated under the provisions of the general law of the State of Missouri providing for the government of cities of the third class.

Given under my hand this 10th day of May, 1888.

CHANCELLOR LIVINGSTON, *Mayor.*

I hereby certify that the above is a true copy of a proclamation of the mayor of the city of Joplin, Mo., as published in the Joplin Daily News of May 10th, 1888.

H. L. CRITTENDEN,
Publisher Joplin Daily News.

Joplin, Mo., Jan. 30th, 1900.

Subscribed and sworn to before me this 30th day of January 1900. My term expires Aug. 17th 1901.

[SEAL.] J. W. McANTIRE,
Notary Public.

260 In the Circuit Court of the United States, Western Division of the Western District of Missouri.

SOUTHWEST MISSOURI LIGHT COMPANY, Complainant,
vs.
THE CITY OF JOPLIN, a Municipal Corporation, Defendant.

I, Becca Edwards, special examiner, named in the annexed commission, do hereby certify that on the 2nd day of January, 1901, at the city of Joplin, county of Jasper and State of Missouri, I was attended by John A. Eaton, Esq., solicitor for complainant, and Charles H. Montgomery, Esq., solicitor for defendant, and by the witnesses on behalf of complainant C. W. McAbee, George G. Bayne, E. C. H. Squire, J. R. McDonald, A. P. Mason, John C. Trigg, R. A. Loomis, J. H. Dawson, G. A. Wadleigh, George B. Paxton, Harry Packer, J. C. Miller, F. L. Yale, A. Knoche, Al Overly, William Childress, A. J. Jennings, Frank Felix, George Lavery, J. W. Moore, Harmon Cline, T. W. Cunningham, George Ruddy, J. A. Thurman, W. Guengerich, and the said witnesses who were of sound mind and lawful age, having been by me carefully examined and cautioned and sworn to testify the truth the whole truth, and nothing but the truth, in the within-entitled cause, gave their testimony which by consent of counsel for the respective parties was taken down by me stenographically in the presence of the witnesses, and from their statements, and the said stenographic notes, were afterwards reduced to writing by me and the testimony as extended was thereafter read over and corrected and signed by said witnesses respect*fully*.

[L. S.] 261 In witness whereof, I have hereunto set my hand and seal this 25th day of January A. D. 1901.

BECCA EDWARDS,
Special Commissioner.

262 In the United States Circuit Court, Western Division, Western District of Missouri.

SOUTHWEST MISSOURI LIGHT COMPANY, Pl'ff,
vs.
THE CITY OF JOPLIN, Def't.

Testimony on behalf of defendant, taken before Miss Becca Edwards, special commissioner appointed by said court.

The defendant produced E. C. H. SQUIRE, who being duly sworn, to testify the truth, the whole truth and nothing but the truth, testifies as follows:

Direct examination—Mr. MONTGOMERY:

Q. What official position, if any, do you now hold in the city of Joplin?
A. City clerk of the city of Joplin.
Q. When did you become city clerk?
A. In April '97.
Q. And have been city clerk ever since, have you not?
A. Yes sir.
Q. As such city clerk, state whether or not you are the custodian of all books, papers and records of the city.
A. I am.
Q. I will ask you to produce original ordinance # 441, if you have it in your possession. I will now ask you to read, for the purpose of putting in the record section 5 of said original ordinance which was stricken out before its final passage.

I object to the offer as incompetent and immaterial for the reason that the section referred to appears on face of original ordinance to have been cancelled and erased and the number assigned to that section having been given to the next section in the ordinance
263 and that the offer constitutes no part of the ordinance in question.

A.—

"SECTION 5. The franchises and privileges herein granted to the said Merchants' Electric Light and Motor Company are granted upon the express condition and with the express agreement that the said Merchants' Electric Light and Motor Company shall not, at any time during the term of its franchise, transfer the same to any Electric Light and Power Company now doing business in the city of Joplin, nor shall the majority of the shares of stock of said company be assigned or transfer-ed to parties owning shares of stock in any other electric light and power company."

Q. What is your recollection about electric light company's doing business at the time of the passage of that ordinance? Was there any other company doing business in the city of Joplin except the Southwest Electric Light and Water Power Company or the predecessor of this present complainant?

A. I don't recollect any other at that time.

Q. You will now please turn to Record 6, page 588. Read that part which relates to ordinance # 441.

A. "On motion of Yale, ordinance # 441 was placed on its third reading. On motion by Roach ordinance # 441 be amended by striking out section 5 of said ordinance and renumbering the following sections On a roll-call on the above motions the vote was as follows: Sherwood, Porter, Roach, Sapp, and Fields voted 'I.'—Crossman, Yale, Norris voted 'Nay.' The chair declared the motion carried and the section stricken out."

Q. That ordinance # 441 is the ordinance granting the franchise to the Merchants' Electric Light & Motor Company?

A. Yes sir.

I object to the offer as immaterial and for the further reason that it forms no part of the franchise in question.

Q. You will now turn to Record "D," page 228, dated Sep-
264 tember 3rd, 1896, and read that part of the record which refer- to electric lighting.

A. "Light on the corner of Fourteenth and Main street was referred to by Cline and on his motion the matter was referred to the committee on fire, water and gas, with instructions to confer with the Southwest Missouri Electric Light Company and ascertain whether they would maintain a light as had the Merchants' Electric Light Company in the past without cost to the city."

Q. Now turn to Record "D" page 346 and read that part of date July 20th, 1897, relating to the establishing of a light at Fourteenth and Main street.

A. Mason presented the petition as follows:

JOPLIN, MISSOURI, *July* 16, 1897.

To the honorable mayor and council of the city of Joplin, Missouri:

We, the undersigned, citizens and tax-payers of the city of Joplin, Missouri, respectfully petition your honorable body to have an arc light placed at the corner of Fourteenth and Main street. The railroad crossing at this place creates a strong necessity for a light.

(Signed) A. KNOCHE,
G. W. BURGESS,
PHILIP MYERS, AND
SEVENTY-SEVEN OTHERS.

On motion of Moore the petition was received and placed on file.

Q. Now Book "D" page 357 July 20th, 1897.

A. "On motion of Lowry the petition for an arc light at Fourteenth and Main streets was referred to the committee on fire, water and gas with power to act."

Q. Turn to Record "D" page 364 and read anything there referring to the electric light on Fourteenth and Main street.

A. "Moore for the committee on fire, water, and gas reported that they had ordered and arc light put up at Fourteenth and Main streets."

Q. Are you familiar with the locality of Fourteenth and Main street?

A. Yes sir, tolerably so.

265 Q. Is that point referred to in ordinance # 441?

I object to that question for the reason the ordinance is the best evidence of what it says and what it refers to.

Q. Requiring a light to be maintained on the front of Freeman's foundry?

A. Freeman's foundry fronts right there on Fourteenth and Main streets. The front of the building would be at that point.

Q. The front porch of Freeman's foundry is how far from the intersection of Fourteenth and Main streets? Is it at the northwest corner of Fourteenth and Main streets?

A. It is the northwest corner of the intersection.

Q. Then how does the railroad crossing cross along there?

A. It crosses Main street north of the intersection of Fourteenth.

Q. About how far?

A. About twenty feet I should judge.

Q. Then a light up at the corner of Fourteenth and Main streets would light the crossing?

I object as it calls for a conclusion of the witness.

A. Yes sir.

Q. Do you remember the circumstance of the sale of the property of the Merchants' Electric Light and Motor Company to the Southwest Missouri Light Company?

A. No, I have a very indistinct recollection.

Q. You remember about when it occurred?

A. No, I don't remember when it occurred. I w-s not engaged in anything that would draw my attention to it in any way.

Q. From the 1st of September '96 down to the first of September '99 a period of three years, could you say what kind of street lights were maintained by the Southwest Missouri Light Company in the city of Joplin?

I object to the question as calling for proof in competent,

266 irrelevant and immaterial.

A. During a portion of the time the lamps were not lit, the streets were in darkness, lighted very irregularly.

Q. Well do you know about what, in your judgment were the number of lights that were out and what number were kept burning during this time?

A. I could not tell that. I know when the bills came in for payment that — was a considerable amount of non-service reported.

Q. Did you notice yourself whether they were burning or not?

A. In a general way.

Q. Did you notice the street lights in a general way sufficiently well to tell whether the lamps were as brilliant as ordinary lights of that kind?

A. I never noticed that.

Q. Do you remember anything about the incandescent service during those three years?

A. Yes, it was irregular and the lights would frequently go out.

Q. Do you remember any circumstance that fixed that matter in your mind?

A. No I don't recall it now.

Q. Was you secretary of the Joplin Club at any time?

A. Yes sir.

Q. Do you remember what satisfaction the service gave to them?

A. I don't think they used electric light while I was secretary.

Q. Do you remember anything about the service of the club and whether it was taken out and changed to gas and if so, what reason was assigned for it?

A. No, I can't recollect that. I don't know whether the change was made while I was secretary or afterwards.

Q. Well you may state whether or not you was with the finance committee frequently in auditing bills?

267 A. Yes sir.

Q. And while auditing those bills did the discussion come up regarding the quality of the lights?

A. Nearly every month.

Q. Was there any complaints made to the superintendent of the company to furnish better lights?

A. It was made, yes sir.

Q. Do you remember what the superintendent did regarding the matter?

A. No not particularly. I don't know what he did. He was continually making an effort to get the bills paid and the finance committee refused to pay them I remember there was a considerable discussion made in the bills.

Q. The cause was the failure of service?

A. Bad service always.

Q. Did that continue during those three years?

A. There was a part of the time, two or three months, the lights burned very well.

Q. You may now turn to record November 3rd '96. Read that part which refers to the report of the finance committee page 246 Book "D."

A. "The finance committee made the following report, which on motion was adopted. We, your committee on finance would respectfully report that we have carefully examined the claims and accounts against the city for the month of October and find the same correct and would recommend the payment of the same with the exception which we leave with the city council. Southwest Missouri Light Company $329.50.

On motion of Cunningham the Southwest Missouri Light Company's bill was reduced to $300."

Q. Now turn to January 5th '97 and read that part of the record which relates to the report of the finance committee particu-

268 larly with reference to the bill of the Southwest Missouri Light Company.

A. Finance committee made the following report, which on motion was adopted. "We, your committee on finance would respectfully report that we have carefully examined the accounts for the month of December and find them correct and would recommend the payment of the same with the following exception, which we leave for the council. Electric light bill $355.31; on motion of Cunningham, the light bill was reduced to $326.76."

Q. You will now turn to Book "D," page 461, dated January 4th, 1898, and read that part of the record relating to the report of the finance committee more particularly with reference to the bill of the Southwest Missouri Light Company.

A. "Mr. Thurman submitted the following report: Joplin, Missouri. January 4th, 1898. To the honorable mayor and council of the city of Joplin, Missouri. We, your committee on finance beg to report that we have audited the claims and accounts against the city for the month of December 1897, and find them correct and recommend the payment of the same with the exception of the bill of the Southwest Missouri Light Company for November, which we respectfully report back to the council for consideration. On motion of Mr. Mason the report was adopted."

Q. While you was city clerk under what contract was the Southwest Missouri Light Company furnishing lights to the city, if you remember?

A. On contract of 1894 for a period of five years.

Q. That contracts seems to have been entered into by the predecessor of this company. Now you may state whether you ever heard any statement by the representatives of the Southwest Missouri Light Company as to whether they were bound by that contract or not?

269 Object to the question as immaterial and not referring to any particular person, and wholly incompetent.

Q. Did you ever hear any person or agent of that company say that they furnished light but still they were not bound by the contract?

A. I don't remember of ever hearing any such statement.

Q. Do you remember the circumstance of the street fair being held in this city last fall?

A. Yes, sir.

Q. Do you remember whether the Southwest Missouri Light Company were asked to furnish lights for that fair and whether they refused on the ground that they could not do it because they didn't have the facility for furnishing the light?

A. I remember a statement to that effect being made by the manager of the fair to the council.

I object to the question and answer and move that it be stricken out as it is incompetent, irrelevant and hearsay.

Q. Have you the original assessment-list and affidavit made by the Southwest Missouri Light Company for the year 1899?

A. Yes sir.

Q. I wish you would produce it. This is the original assessment-list is it?

A. Yes sir.

Q. This exhibit marked Exhibit "A" was the list and affidavit furnished you by the representative of the Southwest Missouri Light Company as being the property that they had in the city of Joplin the 1st of June?

A. They didn't turn it to me; they furnished it to the assessor and it was turned over to me.

Q. This is the list furnished by the assessor?

A. Yes sir.

Mr. MONTGOMERY: I now offer Exhibit "A" in evidence.

270 Q. State whether or not you have the original light schedule adopted by the council of the city of Joplin on March 6th, 1900.

A. Yes sir.

Q. You will please get it—Is this the schedule?

A. That is the report of the committee on lighting adopting the schedule of prices.

Mr. MONTGOMERY: I now offer the light schedule, Exhibit "B."

Q. Since you have been clerk has any light been maintained on the front porch of Freeman's foundry to light the Frisco crossing or has any light been maintained near there by the Southwest Missouri Light Company free of charge so far as you know?

A. So far as I know that has not. I am not very familiar with that part of the town; that is, I don't go down there very much.

Q. This light that was established on July 17th, I think it was '99, you may state whether or not the city has paid for that light since it was established?

A. There was an increase in the number of lights at that time of one light that the city paid for and I am quite sure that was the light. I don't know of any other light being ordered in.

Q. You have examined the record and find no other light except that one?

A. Yes sir.

Q. And so far as you know the city had paid for that?

A. Yes sir.

Q. While you have been clerk you have no knowledge of the Southwest Missouri Light Company maintaining any light to light that crossing free of charge?

A. No sir.

Q. Since the 1st of September, 1899 and up to the time of the starting of the city light plant in February, 1900, were there
271 any city street lights maintained in the city of Joplin that you know of?

A. Between what dates?

Q. Between September 1st, 1899 up to the time of the starting of the city plant in February 1900.

A. No there was none.

Q. Since February 1900 the time that the city plant was started has the Southwest Missouri Light Company maintained any street lights in the city?

A. None that I know of.

Q. None in the city and none at Fourteenth and Main that you know of?

A. No sir.

Q. None on the front porch of Freeman's foundry to light the crossing?

A. No sir.

Q. Does the city today maintain the light at the intersection of Fourteenth and Main?

A. I think it does but I don't know.

Q. Were you familiar with the discussion and agitation that led up to the building of the city plant?

A. Yes sir.

Q. Now can you state from that general discussion what cause prompted the city to build its light plant or whether the bad service of the Southwest Missouri Light Company had anything to do with it?

I object as incompetent, immaterial, and calling for hearsay, reports and rumors and witness' conclusion in regard to such rumors.

A. I was secretary of the club at that time and also clerk of the council and was present at a great many of the committee meetings that were held and never heard of any reason given for the building of a municipal plant except for good service and on
272 account of the poor service of the Southwest Missouri Light Company.

Q. State whether or not if the service furnished by the Southwest Missouri Light Company had been in conformity to the franchise and had been satisfactory whether any city plant would have been built?

I object to that as calling for a conclusion of the witness and wholly incompetent.

A. No sir.

Q. During the time you have been clerk have you been present at most of the meetings of the finance committee?

A. Yes sir.

Q. And assisted in those meetings?

A. Yes sir.

Q. And this committee is the one that audits the bills for the various lights?

A. Yes sir.

Q. Then if the Southwest Missouri Light Company had been furnishing the light free were you in a position to know of it?

A. No, not necessarily; there would have been no way to get at it; it would not have shown on their bill.

Q. You was not clerk at the time that Cline made the motion to

have the matter of the furnishing a light as required by ordinance # 441 referred to the Southwest Missouri Light Company was you?

A. No sir.

Q. That was attended to before you became clerk?

A. Yes sir.

(That is all.)

Cross-examination—Mr. EATON:

Q. Mr. Squires, section 5 which you read upon your direct examination from original ordinance # 441 which bears on its face cross-marks in red ink cancelling it from the ordinance does it not?

273 A. Yes sir.

Q. At the time the discussion to which you have referred to regarding the establishment and building of a city plant, were you advised and did you know of the steps then being taken by the Southwest Missouri Light Company to largely increase their plant by adding a steam plant at the Falls. Did you hear of those improvements?

A. I had been quite intimate with the superintendent for two years and he was saying that he was expecting every few months to make these improvements but the improvements were not made and no steps taken to begin them until after this discussion had been going on and the plans were made to erect this city plant and were on the way.

Q. Well don't you know as a matter of fact that the work was actually going on down there at the time the city voted its bonds here?

A. I don't remember exactly when the work did begin down there with reference to voting bonds.

Q. Now this Freeman foundry stands on a triangular piece of ground does it not?

A. Made triangular by the railroad.

Q. And the front of that foundry has a porch on it—rather a low porch on it?

A. Yes sir.

Q. About how wide is it?

A. I don't know.

Q. How far back from the stre-t does that front stand?

A. I should judge back some fifteen feet possibly from the street.

Q. Both from the street and the railroad?

A. Yes, back from the railroad some little distance.

Q. And how far is it from that porch out to the intersection of Main and Fourteenth streets?

274–286 A. About the distance that the foundry is back from Main street; it sets on the line of the lot on Fourteenth street.

Q. How wide is Main street at that point?

A. Eighty feet.

Q. The light that was established under the actions of the light

committee you read was hung at the intersection of that street was it not?

A. Yes, sir.

Q. And it was put there in obedience of the action of the council which you have read and introduced here?

A. Put there by order of the council, yes, sir.

(That is all.)

E. C. H. SQUIRE.

Subscribed and sworn to before me this Jan. 21, 1901.

BECCA EDWARDS,
Special Commissioner.

* * * * * * *

287 J. R. McDONALD, of lawful age, being produced, sworn and examined on behalf of the defendant, deposeth and saith as follows:

Direct examination—Mr. MONTGOMERY:

Q. Your name is J. R. McDonald?

A. Yes, sir.

Q. You reside in Joplin, Jasper county, Missouri?

A. Yes, sir.

Q. And have for how many years?

A. Since 1872.

Q. What is your business now and how long have you been engaged in that business?

A. I guess I could claim to be an electrician.

Q. How long have you been engaged in that business?

A. Actively since February, 1887.

Q. Was you ever in the employ of The Southwest Missouri Light Company, the present complainants in this case?

A. Yes, sir; from June 1st, '96 to Aug. 27th '97.

Q. Were you in the employ of the Merchants' Electric Light and Motor Company?

A. Yes, sir.

Q. What time?

A. I think September 9th until June 1st, '96.

Q. Then you were in their employ when they sold out to the Southwest Company the 9th of June '96?

Q. Were you familiar with the circumstances of that sale, nature of the sale and what was sold?

A. Yes, sir.

Q. Tell us all about what was sold and what they did with the property.

I object to that as incompetent for the reason that it is
288 shown that all negotiatons were in writing, therefore it is incompetent.

A. The Southwest Missouri Light Company consumed the Mer-

chants' and they took possession of the pole line, wire, transformers, arc and incandescent lamps and dynamos.

Q. What property was there that had formed a part of the plant of the Merchants' Electric Light Company that was not sold in the sale?

A. Engine and boilers and ground.

Q. How about the building?

A. Nor the building.

Q. Prior to this sale had the Merchants' Electric Light Company after they started their works up, at all times maintained a plant for the generation of electricity in the city of Joplin?

A. Yes sir.

Q. After the 1st of September '96 after the Southwest Company bought the same, have they ever maintained a plant in the city of Joplin to supply the city and citizens with light?

A. Only one or two nights; I think it was in '97 that they run short of power at the Falls and they had to start up the Webb City plant and get Freeman to start up his plant.

Q. After the sale to the Southwest Company by the Merchants' Company did you continue in the employ or were you employed by the present complainant?

A. Yes sir, I was employed here in the city from the 10th of June I think it was Mr. Freeman came back, until the 4th of August I believe and then I was transferred to take charge of the power plant at the Falls.

Q. Well you went to the Falls then the 10th day of August—how long did you remain in charge of their power plant there?

A. Till the first of June '97.

289 Q. Then where did you go and who did you work for?

A. I still remained in their employ; they brought me back to the city to do the collecting and soliciting for them.

Q. After the sale to the Southwest Company what did they do with the machinery that had formed a part of the Freeman plant?

A. They used a pole line and the transformers, etc., all except the dynamo; they remained there at the plant or Freeman's place until March or April '97 and then one of them was transferred to Port Arthur, Texas.

Q. When did they cease operating the plant regularly?

A. First of September '96.

Q. Then they operated the Freeman plant up to September '96; did you say the dynamo still remained in that plant until when?

A. I think April '97.

Q. Then there was a day or two that you maintained a plant in the city?

A. I think that was in the spring of '97.

Q. Outside of that day or two there never has been maintained a plant for the generation of electricity in the city of Joplin by the Southwest Company, has there?

A. No, sir.

Q. What did they do with the other machinery?

A. I think they have the arc machine down at the plant now, not in use though.

Q. Any of it not in use at the Falls shipped elsewhere?

A. The only part I remember was that that went to Port Arthur.

Q. Then after the 1st of September you say that they ceased to operate the Freeman plant in Joplin and never regularly operated a plant here after that?

A. No, sir.

290 Q. Then shortly after that, perhaps the next spring, was the Freeman plant dismantled as a electrical plant and all its machinery taken out of it and moved to some other point?

A. Yes sir, I think it was in April that it was loaded up and shipped to Port Arthur.

Q. Did they use the pole lines or take them up or what?

A. The poles were taken up and used — other places along the line.

Q. The Southwest Company bought out the Merchants' Light Company—before they bought them out were they doing a lighting business in the city of Joplin and had their plant at the Falls?

A. Yes sir.

Q. And before that purchase by them did they have a pole line in the city of Joplin?

A. Yes sir.

Q. Then after this sale by the Merchants' Company to the Southwest Company did the pole line of the Merchants' Company cease to be a pole line and was it taken up and used at other places?

I object to the part of the question about its ceasing to be a pole line, therefore incompetent.

A. It took them about a year I think to make all that change, taking poles up and transferring the wire, but they virtually quit using it and took up the south end right away, they had no use for it.

Q. After the sale then by the Merchants' Company to the Southwest Company they used the pole line that they had used before the sale and took up the pole line that the Southwest Company had had and used the poles on the Southwest Company's old lines.

A. Took up the poles, yes sir.

Q. How about the wires?

A. Most of them were transferred onto an original pole line.

291 Q. On a pole line they had maintained and operated in some other franchise before they operated under the Merchants'?

A. Yes sir.

Q. You mean by consuming, that they swallowed up the Merchants' Company, tore up its pole line and run its own plant as it had before?

I object to that; it may mean that it bought it out.

A. Yes sir.

Q. After the sale of the Merchants' plant to the Southwest Mis-

souri Light Company who got the business of the Merchants' Company? Did the Southwest Company get it?

A. Yes sir.

Q. After they ceased to operate the Merchants' plant state whether or not they had sufficient power and facilities to do all this business.

A. No sir, not at that time they didn't.

Q. Well what was the trouble—what did they lack?

A. Their motive power was short and under the most favorable circumstances our water power was not sufficient to pull the load and our auxiliary steam plant was not sufficient to make it up.

Q. Small auxiliary plant?

A. Yes sir, 200 h. p.

Q. What effect did that have on the commercial and street lighting?

A. When it would get too bad I would cut out part of the street lights sometimes cut them all out in Webb City; almost every night I would cut our ten-o'clock circuit off sometimes at 9 o'clock only on Mondays and Saturday- I would try and let it run till 12 o'clock.

Q. How about the brilliancy of the street lights?

A. When they burned the brilliancy was all right up to
292 normal but they would flash and pop and jump, burn possibly five minutes until the arc would burn so long and the lamps and the dynamo would break three or four times in succession but it would catch again.

Q. From that time, that was along about the 1st of September '97?

A. No, the plant was in bad shape there in '96, awful shape and they were rebuilding it or trying to and took their water wheels out and attached them up, repaired their line shaft and put in new teeth on their water wheels and up to the middle of September our service was awful bad, so bad we could not run more than two or three hours till we would have to stop and I think Thanksgiving we were awful short of power and had been cutting off lights to beat the band and then we got a rain and that helped us out and we were all right until about the time we had a flood and that cut us off and we could do nothing at all and it overloaded us electrically especially in our arc light; our incandescent system we still had a lot of capacity left.

Q. From that time up to the building of the city plant and the voting or the city bonds the city was growing very rapidly was it not?

A. Yes, sir, I left here in '97; I took both the papers and was very familiar with the way the town was progressing.

Q. When did you return?

A. 1st of August '99.

Q. Well, did they put in any new water wheels or put in any new auxiliary steam plant while you were in their employ?

A. No, sir, the superintendent had some plans drawn several times, but that was all.

Q. Just drew plans and talked?

I object to the question assuming that there was talk.

A. Yes, sir.

Q. Well state whether or not all that was ever done by the
293 Southwest Missouri Light Company besides drawing plans and talking?

A. That was all that was ever done to my knowledge. Mr. Myers and Mr. Densmore and them told me what all they were going to do but was very indefinite about it; never said when they would do those things.

Q. Well then you was away from there in August '97 and don't know when they commenced their auxiliary steam plant, or when they let their contract or anything?

A. No sir, in March—no I think it was in February '99, I sent a man from Port Arthur here to reconstruct their pole line. Mr. Myers was down there and asked me if I could spare Beurck and I was trying to get away from down there and that was the way I come to find out what they were doing in regard to the construction of their auxiliary steam plant and when I came back in August I was out at the Falls and the stuff was all laying out there, the water wheels on top of the ground and the engines were just unloaded and the foundation was not done for the water wheels.

Q. That was the new auxiliary steam plant they constructed?

A. Yes sir.

Q. They took out the water wheels and put in new ones; was that before or after the steam plant?

A. Afterwards.

Q. You remember when they started that steam plant?

A. I don't remember the date; I was down there.

Q. They gave a sort of blow-out?

A. Yes sir, September or October '99.

Q. You are now the electrician of the city plant?

A. Yes sir.

294 Q. When did you commence as their electrician?

A. 23rd day of November '99.

Q. The city established a light schedule?

A. Yes sir.

Q. You saw the electric light schedule that was adopted by the committee on fire, water and gas and adopted by the council?

A. Yes sir.

Q. You are familiar with that schedule?

A. Yes sir.

Q. Was you consulted in the preparation of it?

A. Yes sir.

Q. Now in the getting up of that schedule as an electrician, and in the electric lighting business, you may state whether or not that is a fair light schedule and whether or not it would yield a fair profit?

A. Yes, sir, it is a fair one; in this capacity—or in this locality the capacity for fuel and water it could be profitable.

Q. Was it your intention as a city employee or the intention of

any one else that you heard of to operate the city plant and raise the cost of the operation by taxation?

A. No sir.

Q. What was the purpose in doing commercial lighting?

A. To try and make the street lighting cost nothing.

Q. To try and make the profit on the commercial lighting pay for the street lighting so that it would not cost the property-owners anything to run the plant?

A. Yes sir.

Q. Do you know anything about Wadleigh, Trigg and all of them telling Myers that, just after the bonds were voted?

I object to that.

295 Q. Did you hear anything about Myers that offer-d to furnish power free so that they would not do commercial lighting?

A. Yes sir, about that time I was in Port Arthur; I got a letter from Mr. Burk.

Q. In your judgment, could you operate the city plant and do enough commercial lighting at a profit to pay the operations of the plant so as to cost the tax-payers and citizens nothing?

A. Yes sir, *er* could do that.

Q. When this injunction was run, state whether or not you had any commercial lighting.

A. Yes sir, just had commenced doing commercial lighting.

Q. From the amount of commercial lighting you was doing, at the price you was furnishing it, and the demands you had for commercial lighting, state whether or not you could have made enough off of it to run your street lights free of charge.

A. I think by the 1st of May we would have had an income of about $520 and our gross expense account at that time would have been possibly $700; I don't think it would have been any more than that.

Q. Where is the Falls located from Joplin—how far from the city?

A. Three and a half miles south and one and a half miles west from Seventh street.

Q. In what county?

A. Newton county.

Q. What date did the city light plant start its operations?

A. 16th of February, I think.

Q. What year?

A. 1900.

Q. When you started your plant and commenced doing commercial lighting before the injunction was served, did you pur-
296 chase any material to do commercial lighting that you could not use for your street lighting?

A. Yes, sir.

Q. About how much have you that you can't use for other purposes?

A. About $2000 worth.

Q. After you received notice of the injunction, you may state what instructions you had from the board of managers and from the various city officials with regard to shutting off commercial lighting?

A. Had instructions to cut them off and did so.

Q. You may state whether you examined the line since and saw whether anybody had connections for lighting?

A. I found one.

Q. Did you shut it off?

A. Yes, sir.

Q. Has the city been doing any commercial lighting since then?

A. No, sir, not to my knowledge.

Cross-examination—Mr. EATON:

Q. You dropped the remark, Mr. McDonald, something about the present capacity of the city plant—would it have been necessary to increase its capacity in order to have done commercial lighting?

A. We could have furnished current for 1600 lights 10-candle power

Q. To have furnished the lighting you would have had to increase your capacity?

A. Possibly, of course that would have depended solely on service.

Q. And after you had increased your city lighting you would have had to increase your other lighting more?

A. That was owing to service; if their service had kept bad and ours good, we would have had to increase.

Q. You made your schedule of rates lower than theirs, didn't you?

A. Yes, sir.

297 Q. During the time you were at the power-house in 1896 to April '97 you did considerable repairing while you was there didn't you?

A. No sir, not much; I think about the 1st of September was about the last stuff there that we put on—no it was November. It was a gear wheel for the top of the water wheel but after I went there we only expended $86 for material to repair with, from April until June.

Q. How long in June?

A. I came to Joplin the first of June, July and until the 27th of August, then went to Port Arthur.

Q. How long did you remain there?

A. Until July 30th, '99.

Q. When did your hostility against Mr. Myers begin?

A. Never in the world.

Q. Never was begun?

A. No sir.

Q. You quit the service at Port Arthur, came back here and was looking after the affairs of the city and they were building a new plant?

A. No sir, I came back and went to work for the Missouri Lead and Zinc Company; put in their plant for them.

Q. Then you drifted to the city plant and been with it ever since?

A. Yes sir.

Q. Well you did the collecting part of the time for the Southwest Company, did you?

A. Yes, sir.

Q. When you would cut out these lights and they would not be lighted and you came to collect, the city would dock you for it wouldn't they?

298 A. That was a bill that I didn't collect; that was presented to the council.

Q. Didn't you present it?

A. No it was presented by the superintendent.

Q. Do you know of its being docked? Whenever you cut the lights they cut the price?

A. I suppose so; I suppose the proper rebate was granted on the bills.

(That is all)

Redirect examination—Mr. MONTGOMERY:

Q. Do you remember the street fair that was held here in the fall of 1900.

A. Yes, sir.

Q. Do you remember about an application being made by the Elks to the Southwest Missouri Light Company for lights for that fair?

A. Yes, sir.

Q. Do you remember whether they furnished them or not or whether they said they would not furnish them?

A. The committee of the Elks went to the Southwest Missouri Company and wanted them to furnish them the lights and said they didn't want to try to furnish them for they couldn't furnish as many as the- wanted and didn't want to furnish any at all.

Q. Well the street fair, part of it in fact all of it was held on the streets was it not?

A. Yes, sir.

Q. And in order that this fair might not be a failure and might continue, the city furnished the lights on the street without any charge on account of the failure of the Southwest Company to furnish the lights?

A. They furnished all the lights that were used for the

299 benefit of the general public.

Q. The city furnished lights so that they could have lights and it would not be a failure?

A. Yes sir.

Recross-examination—Mr. EATON:

Q. Those were arc lights?

A. Yes sir.

Q. Did you apply to the Southwest Company to furnish those lights?
A. No sir,
Q. How did you know?
A. The committee came to me and I told them we could not do it without they got a waiver from them. I wanted them to get a waiver so that we could do the commercial lighting in the booths.
Q. You wanted to extend the commercial lighting?
A. Yes sir.
Q. In other words you would put up a job on them?
A. Yes sir.

Redirect examination—Mr. MONTGOMERY:

Q. Then the Southwest Company was about like the "dog in the manger" they couldn't do the lighting and didn't want us to do it?
—. ——.

Recross-examination—Mr. EATON:

Q. Do you know what the capacity is now down there at the Falls with the new water wheels and the new steam plant?
A. I should judge the engines to be about 300 or 350 h. p. each.
Q. How many of them?
A. Two and the water wheels I think are about the same.
Q. Don't you know those engines are 2000?
A. Well I should say not; they have a 1200 h. p. boiler there but those engines are not to exceed 350 h. p.
(That is all.)

300–320 J. R. McDONALD.

Subscribed and sworn to before me this 21st day of January A. D. 1901.
My term expires January 3rd, 1903.

BECCA EDWARDS,
Special Examiner.

* * * * * * *

321 GEORGE T. BAYNE, of lawful age, being produced, sworn and examined on behalf of the defendant, deposeth and saith, as follows:

Direct examination—Mr. MONTGOMERY:

Q. State your name, age, occupation and residence.
A. George T. Bayne, thirty-three years, superintendent water works Co., Joplin.
Q. How long have you lived in Joplin, Mr. Bayne?
A. Since July 2nd, 1896.
Q. Were you ever in the employ of the Southwest Missouri Light Company?
A. I was.
Q. In what capacity?

A. Superintendent.
Q. For what time?
A. From the time I came to Joplin until the 30th of June, '98.
Q. You commenced with them the 1st day of July, '96?
A. I think I arrived here the 2nd day and continued for two years.
Q. When you ceased to be superintendent, who succeeded you?
A. Mr. White.
Q. S. J. White?
A. S. J. H. White.
Q. Do you remember when the sale of the Southwest Light Company,—or the sale of the Merchants' Company to the Southwest Light Company was had?
A. It was some time a month or six weeks prior to my coming here, I think; just shortly prior to that.
Q. About the time that you took charge of the Southwest Company did you get any information about a light that was to be furnished free to the city? Any one call your attention to it?
A. There was a light at the corner of Fourteenth street and my recollection is that it was not running. My attention was called quite a number of times by citizens and once or twice by the councilmen; I think the committee came to see me in regard to it.
Q. That was while you was superintendent of the South-
322 west Company?
A. Yes sir. My recollection is it was discontinued just before I came or about the time I came.
Q. Then you was informed that the franchise to the Merchants' Company required the maintenance of that light free of charge?
A. Yes sir, that is my understanding.
Q. Well, as superintendent of the Southwest Missouri Light Company did you maintain that light free of charge to the city on the front porch of Freeman's foundry for the Frisco railroad crossing or what did you do?
A. The light I had in mind was an arc light; we never maintained one in front of Freeman's foundry on the porch.
Q. Then you never maintained a light at either place free of charge?
A. Not to my knowledge.
Q. Do you remember Freeman speaking to you about it?
A. Yes he mentioned it.
Q. Did he offer any objections to putting it on his porch?
A. No sir, when my attention was called to it it was the arc light on the corner.
Q. Now as superintendent of that company, what action did you take about that light?
A. We didn't take any. It run along, and the city finally ordered the light put in there and we put it in and charged them for it.
Q. Did any of the officials of the city, Mr. Moore, chairman of the water and gas committee, or any one else inform you of the fact that the Freeman franchise required you to do that free of charge?

A. Yes, they came to me, but we didn't feel that we could operate it free of charge and didn't do it and shortly after that the city ordered the light there.

Q. Well, during the time you was superintendent, did the company ever offer or propose to anybody to make any attempt to maintain a light on the front of Freeman's foundry or at any point there to light the crossing?

A. Not through me.

Q. After you was superintendent, do you remember how long, if at any time, you ever operated the Merchants' plant here in Joplin?

323 A. I think about three months after I came here.

Q. Up to about what date?

A. Well, I think it was in September; it was discontinued as soon as we got the plant at the Falls in proper shape.

Q. After you discontinued that, who took the business that had been done by the Merchants' Company?

A. Southwest Missouri Light Company.

Q. Adding that business to the other business, state whether or not they had sufficient power to do the business that had been done by the two companies?

A. There were times that we had not.

Q. State whether or not you had sufficient power or sufficient capacity to furnish and supply all the demand for commercial lighting?

A. I object to that for the reason that it is the same question over again. A repetition.

Q. There were times we would have to cut out a few commercial lights.

Q. This shortage of power and shortage of facilities, what effect did it have on the street lights, if any?

A. We cut the street lights first.

Q. Were there times when you did not have sufficient capacity or when you would overload your line?

A. They were often overloaded; we tried to run all we could.

Q. When you overload a line, what effect has it on the lights?

A. It weakens a light.

Q. Does it burn with the same brilliancy?

A. No, sir.

Q. Well, did the city officials make any complaint when you would cut the street lights out or make them burn dim by overloading it?

A. Yes, sir.

Q. What steps did the company take during the time you was superintendent to remedy these troubles?

A. We talked about improvements but no actual steps were taken.

Q. That is as far as it went; simply talk?

324 *Q.* As far as I know; I never knew of any steps being taken.

Q. After you ceased to be superintendent did you know of any actual steps being taken toward the commencement of buildings or

the putting of any machinery to remedy these troubles before the bonds for the city plant were voted?

A. Not to outside appearance.

Cross-examination—Mr. EATON:

Q. When did your connections with the Southwest Missouri Light Company terminate?

A. It was the 30th day of June, '98; my successor was here, came about the 16th or 17th of June.

Q. And what time did you begin in the service of the company?

A. I accepted the position some time during the last week of June '96 and arrived here July 2nd.

Q. Are you an electrician?

A. I have been considered something of one.

Q. At the time you came here there was no light on Freeman's foundry?

A. Not to my knowledge.

Q. There was a light in the street?

A. There had been a light in the street; I don't remember whether it was running or not.

Q. You don't know then of that light being taken at the request of the city from the porch and being put in the street?

A. No sir, the lamp was hanging in the street at the time I came. My recollection is it had been discontinued afterwards.

Q. You say you knew what the franchise was?

A. It was a franchise maintaining a light on the front porch of Freeman's foundry.

Q. You didn't find any light on the front porch of Freeman's foundry; you found it in the street?

A. Yes sir.

Q. Who was over you in the official management of the company

A. Mr. Myers.

Q. The matter of making additional improvements down there and acquiring additional power was under discussion and talked about during your term?

A. Yes sir.

325 Q. When any plans — formed or made for the purpose of these improvements they had to originate with the company itself?

A. I made plans a couple of times.

Q. For additional buildings—additional steam-power and submitted them?

A. Yes sir.

Q. When did you make them?

A. I don't remember the exact dates.

Q. To whom did you submit them?

A. I don't remember. Oh, to whom—Mr. Myers.

Q. Is it your plans that have been subsequently carried out below there?

A. No sir.

Q. Did your plans contemplate an auxiliary steam plant?
A. Yes sir, one set was for the purpose of removing the plant from there entirely.
Q. Where to?
A. North on Turkey creek.
Q. How far from the city of Joplin?
A. Just outside the city limits.
Q. Made plans for the building and steam plants there, did you?
A. Yes, went to Kansas City with them, I believe.
Q. Did you make plans for increasing the building at the Falls?
A. Yes sir.
Q. What action was taken on them while you was superintendent?
A. They came back for the money market was closed and we could not go on with them.
Q. It was pretty hard times then was it not?
A. I don't know.
Q. In '97?
A. Yes sir, about '97.
Q. The flush times of prosperity were not so well known at those times, were they?
A. We had all the business we could take care of and more than we did take care of.
Q. Whenever you would present a bill to the city for these city lights, they would deduct enough to cover what you would cut out in city lights, would they not?
A. Sometimes they were pretty lenient with us.
Q. Didn't they lessen every bill you presented?
326 A. No sir, when we had plenty of water, we had good lights.
Q. But when you didn't have plenty of water and good lights the city cut the bills?
A. I held it up as much as I could.
Q. And they cut it down as much as they could?
A. I think they paid for all light furnished them.
Q. Never was any public lights furnished was there, in the Freeman franchise?
A. You mean street lights?
A. Yes sir.
A. Not to my knowledge.
Q. That was all done under a contract that was originally made between another company and the city?
A. Yes sir.
Q. So that all of this talk about defective city light, if any did occur, was under the contract with another company, the Merchants' franchise granted to Freeman and others was in no way connected with it?
A. Had nothing to do with it.

Redirect examination—MONTGOMERY:

Q. After the Southwest Company was operating under the Freeman or Merchants' franchise what would you say then about their obligation to furnish good street lights?

A. I don't know.

Q. After you went in as superintendent of the Southwest Missouri Light Company and after they had purchased the Freeman franchise and the Freeman plant did you ever make any effort to keep the terms of that franchise?

A. No sir, never considered it.

Q. Did you operate under the Freeman franchise during the time you was superintendent?

A. No sir, I suppose not unless it fit the mode of operation.

Q. Had the company another written franchise of some kind that they were operating under?

A. My understanding was we were operating under the Sergeant franchise.

Q. Was that more liberal?

A. Yes sir.

Q. That was a low-priced light and required this light free of charge, that is the Freeman franchise?

A. Yes sir.

Q. And under this circumstance, you refused to operate under that and operated under the other?

A. Yes sir.

327 Cross-examination—Mr. EATON:

Q. Now, Mr. Bayne, the Sergeant franchise related entirely to public lights, didn't it?

A. I don't remember just the terms of the franchise.

Q. Did you mean to say you furnished commercial lighting under the Sergeant franchise?

A. That is the franchise I suppose we were working under.

Q. Was it your business to determine which franchise you were working under as superintendent?

A. Well, I presume it was; although we cancelled contracts under the Freeman franchise.

Q. Did you make the schedule of prices?

A. No sir.

Q. Who did?

A. The maximum, as I understood it, was fixed by the franchise.

Q. By the Sergeant franchise?

A. I have forgotten just the terms of the franchise.

Q. Does the Sergeant franchise fix the maximum of the rates?

A. When you landed on the scene did you immediately commence the business of operating under one franchise to the exclusion of the other one?

I object to that because it assumes that they were operating under one contract.

Q. When as a matter of fact they were operating under the Sergeant franchise, and furnishing all kinds of lights. I believe you stated, Mr. Bayne, that you considered you were operating under the Sergeant franchise?

A. Yes sir.

Q. Because its terms were a little more favorable, is that it?

A. Yes sir.

Q. Was that as to commercial lighting or city lighting?

A. As to commercial lighting I think. The city lighting was fixed by contract.

Q. What was your scale of prices as to commercial lighting?

A. I don't remember.

Q. Was it for incandescent light for 16-candle power, 10-o'clock circuit for 90c.? Did you exceed 90c.?

328 A. We got less than that.

Q. All-night circuit not to exceed $1.00 per light? Were you below $1.00 per light?

A. I think not; I am not sure.

Q. Were you above $1.00 per light?

A. I can't say; I don't remember.

Q. Wasn't it 50c. per light?

A. For all-night circuit?

Q. Yes sir?

A. No sir.

Q. You don't know what it was?

A. I don't remember. My impression is that we furnished some all night for 75c.

Q. You think that was your schedule, do you?

A. I don't remember.

Q. If your lights were within the provisions of the Merchants' franchise and also within the provisions of the Sergeant franchise, do you still insist that you were operating under the Sergeant and not under the Merchants'?

A. Well, the reason that I think we were operating under the Sergeant franchise is because we cancelled contracts made with the Freeman Company.

Q. You consolidated the Freeman Company with the Sergeant Company?

A. I don't remember.

Q. That is the rights under the Sergeant ordinance and the rights under the Freeman ordinance which is No. 441, had all become owned and controlled by the company of which you were superintendent?

A. Yes sir.

Q. Do you know of any record anywhere that speaks of your operation under any particular franchise?

A. I do not.

Q. The public lights were furnished in a contract during your time that was made with the company that preceded to the rights of the Sergeant franchise?

A. Yes sir.

Q. And the Southwest Missouri Company took over all the commercial business of the Merchants' Company?

A. Yes sir.

Q. And do you know of its transfer of its franchise?

I object to that.

A. I don't know.

329 Q. You don't know of a transfer being executed?

A. No sir.

Q. Don't know what it contained?

A. No sir.

Q. There was a provision by which the purchasing committee agreed to carry out the provision of the Freeman franchise, could you still say that that agreement was violated and not carried out?

A. I will say that we paid no attention to the Freeman franchise so far as the operation was concerned.

Q. Did you pay any attention to any franchise?

A. Certainly, we furnished the city under the Sergeant franchise.

Q. Did you go to the franchise whenever you wanted to make a contract with anybody?

A. No sir.

Q. Ever look at the franchise for the purpose of determining whether you ought to make the contract or not?

A. No sir; we had some controversy about the Keystone hotel; they had a contract with the Merchants' Company and we refused to furnish light under it.

Q. Why?

A. Because the price was too low.

Q. What was the price?

A. $55 a month.

Q. How many lights?

A. I don't remember.

Q. How much per light was it?

A. I don't remember.

Q. Less than a dollar per light?

A. I think it was.

Q. Refused to keep it because it was too low?

A. Yes sir.

Q. $55 per month was the amount?

A. I am not positive; $50 or $55.

Q. I would like to have you answer the question plainly; whether it was within your power or authority to determine on behalf of the company whether you would operate under one franchise or whether you would operate under the other, if you had any such authority?

I object to that for the reason it is not a question of what authority he had, it is a question of what he did.

A. I acted under the instructions of the general manager.

330 Q. You cancelled the Keystone contract because the price was too low?

A. Yes sir.

Q. With whom did you have your talk or conversation at the time you cancelled that contract?

A. The instructions were with Mr. Myers. The talk was with Mr. Wallower; I forget whether we notified Mr. Wallower or Ruddy that we would have to discontinue.

Q. Can you give us any idea of what rate per light you was charging the Keystone at that time?

A. No sir, I don't know how many lights they had at that time.

Q. You are now superintendent of the water works company, are you?

A. Yes sir.

Q. And the water company has been making objections to the maintenance of the dam at Shoal creek?

A. Yes sir.

I object to that as irrelevant and immaterial.

Q. Your relations now are hostile to the Southwest Missouri Light Company?

A. No sir, my personal relations are not. I am not here as the water company, I am here personally.

Q. And the water company of which you are superintendent either is or has been engaged in the litigation in which the Southwest Light Company is engaged in?

I object to that as irrelative and immaterial.

A. Yes sir.

(That is all.)

Redirect examination—Mr. MONTGOMERY:

Q. This litigation spoken of—what was the cause of it, Mr. Bayne?

—. It was caused by the backing up of water on Shoal creek and we considered it detrimental.

Q. Backing up over what?

A. Over our intake in Shoal creek.

Q. And the suit was brought by the water company to abate that nuisance?

A. Yes, sir.

Q. That was the only trouble you mentioned?

A. That was the only trouble.

331 Q. You have been asked about the question coming up of which franchise you operated under. State whether or not the question came up in regard to the maintenance of this light in front of the porch on Freeman's foundry?

I object to the question for the reason it is argumentative, leading and suggestive.

A. I don't remember just what passed at the meeting but the result was we refused to furnish the light.

Q. You had another franchise and you didn't care to maintain the obligations of that franchise?

A. Yes sir.

Q. At that time you may state whether or not you thought that the Southwest Company would ever need that franchise?

A. I personally didn't think so.

Q. But now since the Southwest Company wants to enjoin the city of Joplin on account of that franchise, they seem anxious to have kept the relations of it?

I object to that as incompetent and immaterial.

Q. I will call your attention to the report of the committee on fire, water and gas made to the council on the 16th day of September, 1896. "Fire, water and gas. Moore stated that he had seen the superintendent of the light company in regard to the light at Fourteenth street and was informed by that gentleman that the company did not feel themselves under obligations to maintain the light there." State whether or not you was superintendent at that time or not?

A. I was, but it happened in '96.

Q. You was superintendent at that time?

A. Yes sir.

Q. And you remember the circumstance of Mr. Moore calling your attention to it at that time?

A. Yes sir.

Q. And you were the superintendent he referred to in that report?

A. Yes sir.

Q. Do you remember about looking over and ascertaining a schedule of rates in the Freeman franchise after you were superintendent?

A. Yes, I looked them over.

332 Q. Do you remember whether you kept those terms or whether you charged more for lights than that franchise provided for?

A. I could not say.

Q. The franchise required this light, the company didn't maintain that; that was one violation?

A. ——.

I object to that as being a statement of the counsel and asking the witness to endorse it. For the further reason it assumes that the franchise required it to be maintained at the corner of 14th and Main street.

Q. You may state whether or not the company kept that provision of the franchise while you was superintendent?

I object to the question for the reason that there is no such provisions as is assumed by counsel in the Freeman franchise.

A. We maintained the light free of charge at Fourteenth and

Main while I was superintendent or upon the porch of Freeman's foundry.

Q. The Freeman franchise required the construction and building of a light plant for the generation of electricity to supply the city of Joplin in the city, but the Southwest Missouri Light Company, did they move it out of the city?

Object to the question for the reason that it is leading and assuming that provisions are in the franchise that are not there.

A. We didn't use anything out of the Freeman plant proper at the Falls. We used the pole line, air plant and transformers that were not duplicates of ours, and wires, but where they were duplicates we left the better one standing and took down the poor one.

Q. What became of the larger part of the pole line of the Freeman franchise after the sale to the Southwest Company?

A. That that was not needed was taken down and used elsewhere.

Q. Was the larger part of it needed or not needed?

A. I don't remember.

333–336 Q. Well now, do you remember some contracts made by the Freeman Company to supply lights coming down to your company from the Freeman Company by the purchase?

A. Yes sir, there were some.

Q. Do you remember who these contracts were made with?

A. No sir, I do not.

Q. Did the Southwest Missouri Light Company keep any of those contracts? What did they do with reference to them?

A. Those contracts, with the exception of the Keystone hotel were about the same rate that they were furnishing lights and those were allowed to run with one or two exceptions.

Recross-examination—Mr. EATON:

Q. The question as to the rate, whether it was considered a fair rate or was determined whether the company would cancel the contract or not?

A. Yes sir.

That is all.

GEO. BAYNE.

Subscribed and sworn to before me this 21st day of January, 1901.

BECCA EDWARDS,
Special Examiner.

* * * * * * *

337 J. W. MOORE, of lawful age, being produced, sworn, and examined on behalf of the defendant, deposeth and saith as follows:

Direct examination—Mr. MONTGOMERY:

Q. Mr. Moore, where do you reside?
A. Joplin.
Q. How long have you lived here?
A. Lived here since '76.
Q. You were a councilman at one time, I believe?
A. Yes sir.
Q. Do you remember when you were councilman?
A. I was councilman four years; I think my term expired in '97, my last term.
Q. I will call your attention to the proceeding of the council on the 16th day of September, 1896, particularly to that part which refers to fire, water and gas, "Moore stated that he had seen the superintendent of the light company in regard to the light at Fourteenth and Main and was informed by that gentleman that the company did not feel themselves under obligations to maintain a light there." Was you the Moore that made that report to the council?
A. Yes sir.
Q. Who was the superintendent that you saw, Mr. Moore regarding that?
A. Mr. Bayne.
Q. The gentleman who just testified?
A. Yes sir.

338 Q. Did he assign any reason to you for not complying with the contract, the franchise, in maintaining that light?
A. I think he simply said they didn't consider themselves under obligations to maintain that light.
Q. Now, from the time of that sale down to the starting of the city plant and during the time they furnished lights, what do you say about the street lights, whether satisfactory or not?

I object to that as incompetent; the matter of street lights are not involved in this case.

A. Very much unsatisfactory.
Q. What was the trouble? In what did the unsatisfactoriness consist of?
A. Complaints all the time nearly; most every time I would come out on the street some one would report to me that the lights were out and were very poor when they did burn.
Q. You was chairman I believe of that committee on fire, water and gas?
A. Three years, yes, sir.
Q. And was it a part of your duty to investigate those complaints?
A. Yes sir.

Q. The lights were out quite a portion of the time?
A. Yes sir.
Q. When they did burn, how about their quality?
A. Of course better sometimes than others; sometimes very poor.
Q. Did you as a committee and others make an attempt to get better service?
A. Yes sir.
Q. Did you succeed?
A. Very little, if any.

Cross-examination—Mr. EATON:

Q. At the time you saw Mr. Bayne the light at Fourteenth and Main was hung in the street was it not?
A. Yes sir.
Q. Was you in the council when it had been hung in the street?
A. Yes sir.
Q. That light had formerly been on Freeman's porch?
A. Yes, sir.
Q. How did it come to be put in the street?
A. As I remember it Mr. Freeman proposed to furnish an arc light in the street if the city would furnish the poles and we did so.
339 & 340 Q. The city furnished the poles and Freeman put the light in?
A. It was to be maintained in the street instead of on the porch.
Q. He simply proposed to maintain it and the city agreed to that?
A. That is my recollection.
Q. When was that?
A. I don't remember the date.
Q. How long before this interview you had with Mr. Bayne?
A. I kept no record; I could not say.
Q. What was the reason the council agreed to the moving of the light out in the street?
A. I don't know as I can say.
Q. The council consented to the additional expense of providing the poles for the changing of the light?
A. I don't remember whether it was by request of the citizens or Mr. Freeman; I could not say.
Q. It may have been by request of the citizens and for the reason that the light in the street would better light the crossing?
A. I don't know for the light was right at the crossing on the porch and in fact gave better light from the porch than anywhere else.
Q. Better light on the porch than in the street?
A. Yes sir.
Q. It was better then on the porch than in the street?
A. It could light it as well on the porch as in the street.
Q. The city consented to the moving of that?
A. It certainly did or they would not have furnished the poles.

Q. That was when Mr. Freeman was managing the plant and running it, was it not?

A. Yes sir.

(That is all.)

J. W. MOORE.

Subscribed and sworn to before me this 21st day of January 1901.

BECCA EDWARDS,
Special Commissioner.

* * * * * * *

341 HARMON CLINE, of lawful age, being produced, sworn and examined on behalf of the defendant, deposeth and saith as follows:

Direct examination—Mr. MONTGOMERY:

Q. State your name, age, occupation and residence?

A. Harmon Cline, forty-one years, city circulator, News Herald, Joplin, Mo.

Q. Were you councilman of the city of Joplin?

A. Yes sir.

Q. During what time?

A. '89 to '91 and from '95 to '97.

Q. I will call your attention to record D. P. 228, dated September 3rd, 1896; "Light on corner of 14th and Main street was referred to by Cline, and on his motion the matter was referred to the committee on fire, water and gas, with instructions to confer with the Southwest Missouri Light Company and ascertain whether they would maintain a light as had the Merchants' Light Company in the past without cost to the city." Were you the Cline who made this motion in the council?

A. I presume so because I was the only Cline in the council at that time.

Q. Who was the committee on fire, water and gas?

A. Mr. Moore was chairman at that time.

Q. During the time that you was in the council, say for the last two or three years before the bonds were voted, what kind of lights did the Southwest Missouri Company furnish to the city; what kind of street lights?

I object to that as incompetent and not subject to controversy in this case.

A. They were unsatisfactory.

Q. Tell us about as near as you can how they were unsatisfactory?

342 A. It was almost a nightly occurrence that some of the lights were out in different parts of the city. As a member of the finance committee for a portion of the time I was in the council, I kept tab on the lights or tried to. I remember there was quite a number of lights out at different times for the month and in addition the citizens complained about unsatisfactory service.

Q. Did this run through the period you mention, two or three years preceding the voting of the bonds?

A. Yes sir.

Q. Did the city make any representations to them or try to get them to improve their service before voting bonds for the city plant?

A. I don't remember positively, but of course there was efforts made to have them improved.

Q. Did you discuss this with the superintendent of finance committee?

A. It was either the finance committee or the committee on fire, water and gas. The finance committee kept tab more particularly to the amount that was properly due the company.

Q. Did the company correct this defect up to the time of voting the bonds?

A. No sir.

Cross-examination—Mr. EATON:

Q. Now, at the time the report was made by you the light at 14th and Main was in the street, was it not?

A. I don't know.

Q. Do you know anything about the change from the porch to the street?

A. I don't know.

Q. Don't you remember of the change made from the porch to the street and the councilmen ordered the poles?

A. No, sir, I remember it was the agreement of this company to maintain a light at 14th and Main street, and it was deferred because they did not have sufficient poles and the line was placed there after the poles were supplied.

Q. Had the light been taken off Freeman's porch and put into the street?

A. I don't know that there was a light on Freeman's porch. I simply said that the light was not placed at 14th in accordance to the agreement at the time Freeman started up his plant because of the fact they did not have poles.

Q. The agreement contemplates a light on Freeman's porch. Is that the agreement you refer to?

343-355 A. My impression was that he was to furnish a light in the street.

Q. That was a part of his franchise?

A. Yes, sir.

Q. So you was acting under the belief that the franchise provided for a light in the street?

A. Yes, sir.

(That is all.)

HARMON CLINE.

Subscribed & sworn to before me this 21st day of January 1901.

BECCA EDWARDS,
Special Commissioner.

* * * * * * *

356 J. H. DAWSON of lawful age, being produced, sworn and examined on behalf of the defendant, deposeth and saith:

Direct examination—Mr. MONTGOMERY:

Q. State your name, age, residence, and occupation.
A. John H. Dawson, 37 years old, contracting electrician, Joplin.
Q. How long have you lived in Joplin?
A. The last time I came back here I have lived here 11 years.
Q. How long have you been an electrician?
A. More or less all my life.
Q. Do you remember the voting of the dam at the Falls?
A. Yes, sir.
Q. Do you remember about when that was built?
A. About 1890.

Q. Do you remember there being a set of water wheels
357 being put in at that time?

A. Yes, sir I believe there was a couple of wheels put in there.

Q. State whether or not there was an electric light building constructed at that time at the Falls in connection with this dam?
A. Yes, I believe they were rebuilt.
Q. Do you remember the Merchants' or Freeman Electric Light Company and light plant?
A. Yes, sir.
Q. Where was that located?
A. It was originally located at the gas works between the two towns and then Freeman bought out the gas company's rights, title and interest and moved it up to his foundry.
Q. After the sale what became of the plant, did it continue or was it dismantled and the machinery moved away after the sale?
A. After the Merchants' sold out to the Southwest Missouri Light Company?
A. Yes, sir.
A. Part of the machinery is here now and part at Port Arthur.
Q. What become of the plant as a plant?
A. It was taken by the Southwest Missouri Light Company.
Q. I mean the plant for the generation of electricity?
A. No, sir the wires are connected with the service at their subdivision and the power at the Falls.
Q. What became of the plant for the generation of electricity?
A. The plant was discontinued; the building is there yet and the large engine.
Q. Is it running as a plant now?
A. No, sir.

Object to all this testimony for the reason it is not a disputed fact.

Q. Well did you observe the street lights and commercial lighting in the city after the sale by the Merchants' to the South-
358 west Company sufficiently to tell us whether it was good or bad service?

A. Yes, sir I did.

Q. If bad state the trouble with it.

I object to the question as incompetent and immaterial; no issue in the case in regard to the quality of the service. Not material to the controversy in the case.

A. I don't know exactly what the trouble was because I don't have access to their plant or subdivision, but the lights were very bad.

Q. Tell us further about wh-ther they burned or whether they were regular.

A. You could not depend on the lamps giving service, any of them, because I don't think they employed competent help at that time to look after the lamps; they might possibly have had sufficient power.

Q. State whether this trouble continued from the sale of the Merchants' to the Southwestern down to the building of the city plant.

A. Practically it did. They took more pains with their commercial lights than they did with their street lights. The commercial lights were fairly good, but the street lights were awful.

Q. State whether or not any one has maintained a light on Freeman's porch since June '96, an electric light to light the crossing on Main street?

A. Mr. Freeman has maintained a small light there 16-candle power there with a reflector behind it to light the porch of his foundry and office.

Q. State whether or not the Southwest Missouri Light Company has maintained such light?

A. I don't know how about the last few months in their contract with the city whether they did or not. Freeman did but I don't know whether after he took it down the Southwest Missouri Company maintained one or not; if they did they did it for $6 or $6.50 per month.

359–369 Q. Has Freeman maintained it there since he sold out the plant to the Southwest Company?

A. Yes, sir.

Q. Since the sale by Freeman to the Southwest Company Freeman has maintained a light with a reflector to light that crossing has he?

A. Yes, sir I could not say it would light that crossing but would help a good deal.

Q. Well he has maintained that light on his porch since the sale to the Southwest Light Company?

A. Yes, sir.

Q. What do you say about the incandescent service since the sale to the Southwest Light Company?

Object as wholly incompetent to the issues in the suit.

A. Well I would say the service was pretty bad for a long time after they absolved Mr. Freeman's lights and was bad up to the time

they purchased the Stanley machine and then it continued to improve for a while and then got pretty bad again and is pretty bad at present.

(That is all.)

JNO. H. DAWSON.

Subscribed & sworn to before me this 21st day of Jan. 1901.

BECCA EDWARDS,
Special Commissioner.

* * * * * * *

370 A. KNOCHE, of lawful age, being produced, sworn and examined on behalf of the defendant, deposeth and saith as follows:

Q. What is your name?
A. A. Knoche.
Q. Where do you live?
A. Joplin, Mo.
371 Q. How long have you lived here?
A. 12 years.
Q. Do you remember when Freeman sold out his light plant to the Southwest Company?
A. Yes sir.
Q. Before Freeman sold out, do you remember his keeping a light on the front porch of his foundry to light the Frisco crossing?
A. Yes sir.
Q. Well, now, what was done with that light after he sold out?

I object to the question for the reason it assumes something was done with it after he sold out.

A. That light was kept burning there on his porch.
Q. Till what time?
A. For three or four months after that.
Q. After the sale?
A. Yes sir.
Q. Then after that, what was done with it?
A. We didn't have any light at all then for a year.
Q. When you was without a light down there what did you do then?
A. I went to Freeman and saw him about it. I thought we were entitled to a light and I asked him about it and he said he had nothing to do with it.
Q. Was that after he sold out?
A. Yes, sir, I took it to the council and they would not do anything, and then I got up a petition.
Q. When was that?
A. That was about nine months or ten months after the light run out.
Q. The light was out about a year and you took the petition?
A. Yes sir.

Q. State whether or not the light was established on 14th and Main street on your petition?

A. Yes sir, we got a light inside of two weeks.

Q. Well, for two or three years after Freeman sold out did you notice the street lights here in Joplin?

A. Yes sir.

Q. What kind of street lights were they?

I object as wholly incompetent.

A. To my opinion they were no good.

Q. What was the trouble? Tell us in detail what the trouble was?

A. They went out lots of nights; I noticed that they didn't
372 run three nights in the week.

Q. Well, what do you know about the incandescent lights and commercial lights they furnished?

A. I know that they didn't burn and then they come round to charge for it.

Q. You took the lights, did you?

A. Yes sir.

Q. You say they would not burn and then they would come round and either make you pay for them or take them out?

A. Yes sir.

Q. Well, now, do you remember when the voted bonds for the city plant?

A. Yes sir.

Q. Did these bad lights continue clear up to the time of the voting of the bonds?

A. They got better after that.

Q. Then after the voting of the bonds to build a city plant they furnished better lights?

A. Yes sir.

Q. How was it before that?

A. Very poor lights.

Cross-examination—Mr. EATON:

Q. Do you remember whether the light was taken off of Freeman's porch and hung out in the street on poles?

A. Yes sir, it was.

Q. When was that?

A. About '96.

Q. Freeman did that?

A. Yes sir.

Q. Out in the street on poles?

A. Yes sir, the city furnished the poles and he furnished the light.

Q. That was an arrangement between Freeman and the city by which the light was taken off the porch and hung in the street?

A. Yes sir.

Q. That was before I sold out?

A. Yes sir.

Q. How long before he sold out?
A. Not very long.
Q. After that did he have a light on his porch still?
A. Yes sir, I believe he has got it yet.
Q. Took the light that was there on the porch and put it in the street?
A. No, he put a big lamp in the street.
Q. Was that a big lamp on the porch or an incandescent light?
A. Yes, incandescent light; got it there yet.
Q. Was that the same light that was always there?
373-399 A. Looked to me like it was, but it may not be.
Q. This big arc light was not on his porch then?
A. No sir.
Q. Never was there?
A. No sir.
Q. No room to hang that kind of a light there?
A. No sir.

Redirect examination—Mr. MONTGOMERY:

Q. Do you know how high the city lights are hung, Mr. Knoche?
A. No sir, that one on the corner is pretty high.
Q. Are the present street lamps high or rather low?
A. I think they are pretty low.
Q. Are they about the same height as Freeman's porch?
A. Yes sir, they are higher.
Q. Well, now, would an arc light on Freeman's porch—how far would it light there?
A. It would not do the street any good.
Q. The railroad crossing is right there at Freeman's porch is it not?
A. Yes sir, about sixty feet from Freeman's foundry there.
Q. Then you remember the people talking about the city plant before the plant was built and the city bonds were voted?
A. Yes sir.
Q. Was that about the time we had bad lights?
A. No, we had bad lights all the time.
Q. I mean, did we have bad lights when that agitation was going on or street lights?
A. Yes sir.

That is all.

ANTON KNOCHE.

Subscribed and sworn to before me this 21st day of Jan., 1901.

BECCA EDWARDS,
Special Commissioner.

* * * * * * *

400 In the Circuit Court of the United States, Western District of Missouri, Western Division.

THE SOUTHWEST MISSOURI LIGHT COMPANY
vs.
THE CITY OF JOPLIN, MISSOURI. } No. 2419. Equity.

Messrs. Trimble & Braley, John A. Eaton, solicitors for the complainant.

Messrs. C. A. Montgomery, Hugh Dabbs, Lathrop, Morrow, Fox & Moore, solicitors for the respondent.

Opinion.

McPHERSON, *J.*:

Both complainant and respondent are citizens of the State of Missouri, and the amount in controversy being sufficient, this court acquires jurisdiction because of the Federal question presented, the alleged impairment by defendant city, of its contract with complainant, entered into by an ordinance, conferring the right to establish an electric light system.

This case was before this court on an application for a temporary injunction, and the writ being granted, an opinion was filed.

For the purpose of abbreviating this opinion, I refer to the former opinion as found in 101 Federal Reporter, 23. Counsel before me in oral argument and in their printed briefs, in no way criticise the former opinion as to the statement of facts, and the analysis generally of the situation, but the contention being as to the conclusions of law in the opinion stated. And since that opinion was filed, the record, either by pleadings or the evidence, has not materially changed. In my judgment, the only questions of importance now presented, were then presented. As I view the case, the question of whether a light, and what kind of a light, was kept at the porch or Freeman's foundry, is in no sense pivotal, let the facts be as they may. The same is true as to whether complainant at all times furnished lights up to the standard of the contract. In all such
401 cases, in all contracts for public services, such as schools, churches, public franchises, such as street-car service, gas lighting, telephones and electric lighting, complaints are made. The complaints may be well founded in part, and may be made partly because of the right, real or supposed, to be in opposition to what exists. If defendant city operates a system of electric lighting, it will meet with like complaints. But many of these alleged shortcomings were adjusted by the city reducing complainant's bills. But in no event were any of these things of such importance as to warrant the city in avoiding its contract if a contract exclusive in its character were made.

The complainant has erected its power-house at some waterfall some few miles outside the city limits. And this it is claimed, is such a violation of the alleged contract as to warrant the defendant city in abrogating the contract. The very statute, under which the

ordinance in question was adopted, provides that when the city erects the lighting plant, it may exercise the power of eminent domain *outside* the city limits, for right of way for pipe lines and other conveniences and necessities. The substantial thing required of complainant, under the ordinance, was to furnish electric lights. The city was and is in no way wronged or prejudiced by the fact that the electricity was conveyed from out in the country, by wire into the city. And the small amount of taxes the city would lose, because of the assessment of the power-house by some country precinct, is too trivial to discuss, and I only mention it because it is in the record. If the contract were made, to induce the erection of the property for taxation, then let the city charge complainant with the taxes. But it is idle to claim that such was the purpose. The contract was to secure lighting.

I can serve no purpose by analyzing and discussing the several things done, finally vesting in complainant all the rights under the ordinance in question. That it has all the rights conferred
402 by the ordinance, I have no doubt and the city from the first has so treated it, and at all times so recognized.

I do not care to give any of the foregoing matters further attention. No one of them, as well as other matters singly, nor all combined, are in any sense controlling in this case, while I suspect that most of them are afterthoughts, arising when considering the defense to this action.

The question, the deciding of which rules this case, is a very important one and is not easily solved. To it I have given much time. It arises upon the following statement:

The statute of the State of Missouri, section 1519, is set forth in the former opinion herein. (101 F. R. 24:)

It will be seen that a city is authorized to erect, maintain and operate electric light works in the city, to light the streets and to supply the inhabitants with light for their own use, and to establish the rates therefor, all of which may be done and prescribed by ordinance.

Then the statute recites:

"Provided the city may * * * grant the right to any person or persons or corporation to erect such works * * * upon such terms as may be prescribed by ordinance: Provided that such right * * * shall not extend for a longer period than twenty years."

Subsequent to the passage of that statute, the defendant city adopted an ordinance authorizing complainant, (its grantors) to erect an electric lighting plant in the city. And at great expense the plant was erected, and has since been maintained and operated.

This ordinance of October 7, 1891 (No. 441), while conferring benefits upon complainant, (or its grantors), is quite drastic, and with much detail protected the rights of the city and placed burdens upon the complainant.

Private parties, as well as the public, were to be protected from all damage in the erection of the works, and the occupancy of
403 the streets and alleys. The work was to be commenced promptly and consummated with dispatch. The size and the

placing of the poles were all provided for. The printing of the ordinance was to be paid for by complainant. The rates to be charged private consumers were fixed by the ordinance. And all these requirements were complied with. The ordinance does not require the city to take streets lights from complainant and it was required to furnish one at a railroad crossing, which was to be, and has been, at no expense to the city.

Shortly before this action was brought, the city adopted an ordinance providing for the erection by it, as by it claimed, by virtue of the statute hereinbefore alluded to, of a system of electric light works, with which it proposes to light its streets, and also to furnish lights to the inhabitants as private consumers. The purpose seems to be to enter into competition with complainant.

That the city can, regardless of the ordinance, light its streets, I have no doubt. At all events, and be this as it may, the complainant cannot and does not make complaint as to that.

But is the contract by ordinance, between the city and complainant, impaired, and therefore in violation of the provision of the Constitution which recites:

"No State shall * * * pass any * * * law impairing the obligation of contracts"?

And whether the State as the State, or the State through a municipality does the act complained of, the same inhibition applies.

The history of the proposal of this constitutional provision, and what led up to it, and its adoption, as portrayed by Bancroft, as well as by others, and notably by Justice Samuel F. Miller, is to me one of the most interesting phases of our history. And the evils
404 sought to be avoided, and prohibited, were perhaps after the commerce clause, and a few others, the important work of the convention.

And to impair a contract does not mean to destroy it. If the rights under a contract are practically taken away, the contract is impaired.

And another thing must be kept in mind. A city council in adopting ordinances, acts sometimes in one capacity and sometimes another. Some ordinances are legislation; making laws for the government of the people of the city. In so doing, it is acting in a legislative capacity. Such ordinances are always, and at all times, subject to repeal, amendment or modification. Other ordinances are enacted by the council under statutory authority granted, when the council is not acting in a legislative capacity, but in a business capacity. And such was ordinance No. 441, under which complainant erected its plant and has since operated it.

There is no provision of the constitution of the State of Missouri bearing upon the question. And the legislature of the State, has adopted no subsequent statute upon the subject, facts to be kept in mind in view of some of the cases cited, and later to be noticed.

The statute of 1891, before referred to, and the ordinance, (441), must be considered and construed together. And the validity and regularity of the adoption of the ordinance are not questioned. Nor is it suggested that the ordinance is in excess of the statutory au-

thority. The general scope of the statute is to authorize the city by its council, to erect, maintain and operate a lighting system by the agency of electricity. On that subject the statute is full and complete, and the unquestioned power is conferred upon the city. But in the same statute, and in the very same section is a negative in the shape of a proviso. This proviso is that instead of the city erecting and operating the plant, it may confer such privileges and impose the burdens upon persons or a corporation, such per-
405 sons or corporation, consenting thereto. And is it not a strained or unwarranted interpretation of the statute to say that the legislature conferred authority upon the city to do both at one and the same time? Does not the statute in effect provide that the city may erect and operate the plant, *or* it may have it done by some person or corporation?

And I fully agree with all that is said in the former opinion herein, as to how any statute shall be construed. The implied provisions and the spirit of the statute are as much of the statute as the express provisions. And the courts are no more justified in riding down the implied provisions and the spirit of the law, than they would be in riding down the express provisions. "For the letter killeth but the spirit giveth life," is well to keep in mind in the court-room as well as elsewhere.

The plain meaning of this statute to me is that the city may do one or the other thing, and only the one thing at a time.

The city made its election. In the fall of 1891, it said in effect that it either could not or if it could, it would decline to exercise its right to erect a plant. But it would, if it could, find some person and grant the right to another. Terms were proposed and those terms were accepted. By those terms, complainant was to erect its plant within a certain time, and in a certain way, and pay certain expenses, and save the city harmless from damages, and furnish, the city at a crossing a light free, and furnish the inhabitants lights for their houses, and shops and stores at certain fixed rates. It is of little concern how the city accepted those terms, whether in writing, or verbally, or by the acquiescence of both parties. The terms were accepted, and for years so regarded by both parties, and so acted upon by both parties. The council, acting in a business capacity, as above stated, proposed the terms and complainant accepted.

Why was a contract not then made? What element or phase of a contract was then lacking? One may possibly be sug-
406 gested but I can conceive of none.

After the contract was made, the complainant erected its plant, and in so doing expended its money, assuming that under the statute the contract would continue in force for twenty years, at which time the whole matter will be relegated back to the people.

But after a few years, the officers of the city change and they conclude that public ownership is the better way. And perhaps it is. But because one party to a contract changes its mind and concludes that the contract was an improvident one, does not justify the abrogation of the contract. This can only be done by mutual consent, and in the case at bar the mutual consent to abrogate the contract

is lacking. And I know of no reason why the government or a State or a county or city should not with the same good faith, in letter and in spirit, observe contracts, as is expected from individuals.

And while every one ought to agree to this, yet the fact remains that of all the cases taken to the Supreme Court under the constitutional provision in question the greater number of cases are those where some subsequent municipal body concludes that it will not observe the contract fairly made by its predecessor.

That a contract was made I have no doubt. What was the contract?

Complainant was to erect the plant at its sole expense and do so in the way above enumerated. It was to operate its plant at its sole expense. It was "to supply private lights for the use of the inhabitants of the city and its suburbs" is the language of the statute. It is true that this quotation is taken from the part of the statute providing for the city to erect its own plant. But in the proviso the same power and rights are conferred upon the persons when they erect and operate them.

The complainant was obligated to erect its works, place its poles, and string its wires. Its only compensation and the only way
407 it could be reimbursed, was to charge the private consumers. And it was to charge the private consumers the ordinance rates. What consumer- did the ordinance contemplate? All those needing the lights and able and willing to pay the ordinance rate. Such was the contract. Has it been impaired?

The contract was to extend for twenty years. But if the city can now erect its plant, and place its poles, and string its wires by the side of complainant's, and charge the same it is not speculative to say that for the same service, complainant will do no business.

Every inhabitant of Joplin is a partner with all the others, and every man of sense, for the same service, at the same price, will patronize his own concern, and thereby increase the profits in which he will participate in one form or another. And then complainant will have a mere naked contract on paper, with the poles standing in the street, and its power-house idle.

That is not only an impairment, but a wiping out of its contract. My own views are, independent of the cases, this should not be allowed. I regard the following cases in point:

Walla Walla Co. *vs.* City, 60 Federal Reporter, 957.
The same case in 172 U. S. 1.

In that case the city agreed not to build during the term covered by the contract. And in the case at bar, the same agreement was impliedly made. The case of Westerly & C. *vs.* The Town, 75 Federal Reporter, is directly in point.

The only criticism that can fairly be made of the case is that it was in a trial and not in appellate court. But the reasoning of the opinion and the authorities cited make an unanswerable argument.

Hamilton Company *vs.* Hamilton City, 146 U. S. 258, is urged by the defendant herein, with earnestness as supporting its con-
408 tention. But that case is not in point for several reasons. In that case the ordinance was not passed under legislative

authority. In the case at bar, the ordinance No. 441 was passed under legislative authority. In that case the contracts had expired by limitation. In the case at bar, the contract would not expire for ten years, from the time this action was commenced.

Nor is the case of Stein *vs.* Bienville, 141 U. S. 67, in point. In that case the contract was to bring water from a particular river, while the new contract was to bring water from another source.

In State *vs.* Turnpike Company, 3 Wallace, 210, the old contract was with reference to a turnpike, while the new one was with reference to a railroad for the carrying of people who might never have used the turnpike.

At present I do not see but that the case of Thompson Company *vs.* City of Newton, 42 Federal Reporter, 723, decided by Judge Shiras, is in opposition to my views.

The same ordinance was again before the same court in 75 Federal Reporter, 884, and it was held that the rights conferred by the ordinance could not be taken away by a repealing ordinance. And that decision was affirmed by the circuit court of appeals for this circuit in 79 Federal Reporter 715. The question now under consideration was not decided, the court observing that the question is "serious and doubtful."

The case of the Matter of City of Brooklyn, 143 N. Y. 596, is not in point, because in that case the ordinance was construed as not granting an exclusive franchise to a company, and the second ordinance granted another franchise to another corporation, a very different question from the one now under consideration.

The same can be said of the great and leading case of Charles River Bridge *vs.* Warren, 11 Peters, 536. And there are a great many like cases, which I do not take the trouble of citing.

But these cases are in no way in point, because no such question is in the record in the case at bar. The city of Joplin has
409 not by ordinance or resolution conferred or attempted to confer a like franchise upon another. It must be kept in mind that what is complained of is, that the city itself is about going into the business of furnishing commercial lights inside the city limits. The effect of doing that is the question, and is the only question in this case.

I do not care to pursue the matter further. I do not contend that all of the cases are in harmony. But I do contend that the weight of the authorities support these views. No case has yet been decided by the Supreme Court or by the circuit court of appeals for this circuit to the contrary. I regard the Walla Walla case, above cited, by the Supreme Court, as controlling because I believe that the implied provisions and the spirit of a contract are just as binding as are the express provisions. And when the city agreed that if complainant would erect the plant it could have the business of the private consumers at the ordinance rates, I believe that the city impliedly agreed to not itself erect a plant. Such, as it seems to me, was the spirit of the agreement.

And if that be so, then the Walla Walla case becomes controlling.

The city did not, as is often done, reserve any right in the ordinance to alter or amend it.

Therefore I conclude that fair dealing requires the city to abide by its contract until it expires by limitation, at the end of twenty years from the adoption of the ordinance.

The decree will be for the complainant and the temporary injunction will be made permanent.

February 7, 1902.

410 UNITED STATES OF AMERICA, *sct:*

I, Adelaide Utter, clerk of the circuit court of the United States, for the western division of the western district of Missouri, do hereby certify that the above and foregoing is a true copy of the record, assignment of errors, and all proceedings in the cause wherein The Southwest Missouri Light Company is complainant and City of Joplin is defendant, as fully as the same appears on file and of record in my office.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri, this 22nd day of March, A. D. 1902.

{ Seal of the United States Circuit Court for the Western District of Missouri, Western Division. }

ADELAIDE UTTER, *Clerk.*

411 In the Supreme Court of the United States.

THE SOUTHWEST MISSOURI LIGHT COMPANY, Respondent,
vs.
CITY OF JOPLIN, Appellant.

Now comes the appellant by counsel, and assigns the following errors on which it intends to rely:

1. That by the record in this cause it appears that the order, judgment and decree in said cause was given for the complainant; Southwest Missouri Light Company, against the defendant City of Joplin, whereas by the law of the land, the said judgment ought to have been given for the said defendant and appellant, City of Joplin, and against the said plaintiff and respondent, Southwest Missouri Light Company.

2. That the circuit court erred in holding that the bill of complaint of the Southwest Missouri Light Company was sufficient to state a cause for equitable relief against the defendant City of Joplin.

3. That the circuit court erred in holding that the act of the Missouri legislature of 1891, (Laws of Mo., 1891, p. 60) gave to cities of the third class, the right to erect, maintain and operate electric light works or to contract for their erection, maintenance and operation, in the alternative, and that such act did not confer upon said cities the right to exercise both of said powers at the same time.

4. That the circuit court erred in holding that the ordinance of

the city of Joplin of February 7th, 1899, and proceedings subsequent thereto, impaired the obligation of the contract with the complainant, contained in the ordinance of October 7, 1891, granting a franchise to the complainant's assignors.

5. That the circuit court erred in holding that it was an implied condition in the franchise of October 7, 1891, to complainant's assignors, that the city of Joplin would not engage in the erection, maintenance and operation of an electric light plant for the supply of electric light to its inhabitants during the period of said franchise.

6. That the circuit court erred in holding that the act of
412 the legislature, (Laws of Mo., 1891, p. 60) conferred upon the city of Joplin the right to construct, maintain and operate an electric light plant for the supply of its inhabitants with electric light or to contract for the erection, maintenance and operation of an electric light plant for the same purpose in the alternative, but that both powers were not conferred, and at the same time in holding that the court had jurisdiction to entertain the bill and render a decree against the defendant.

7. That the circuit court erred in not finding that the complainant failed in a substantial degree, to comply with the terms of the franchise of October 7th, 1891, and for that reason was not entitled to the equitable relief prayed for.

8. That the circuit court erred in not holding that the complainant had repudiated the franchise of October 7, 1891, upon which complainant bases its claim for equitable relief, and for that reason was not entitled to the relief prayed for.

9. That the circuit court erred in holding that the ordinance of the city of Joplin of October 7, 1891, upon which complainant bases its claim for equitable relief was exclusive in its character and disabled The City of Joplin, defendant, from afterwards erecting, maintaining and operating an electric light plant of its own for the supply of electric light to its inhabitants.

Wherefore, said defendant prays that the said order, judgment and decree of the said circuit court, of the United States, for the western division of the western district of Missouri, may be reversed by the Supreme Court of the United States, and a decree be entered in favor of the defendant City of Joplin, and for such further proceedings herein as may be in conformity with justice, equity and the law of the land.

And designates the following parts of the record which it thinks necessary for the consideration thereof.

Exhibit "A" attached to the original bill of complainant,
413 said exhibit being ordinance number 441, being found between pages 1 and 9 of the certified record.

The amended bill of complaint being found at pages 14 to 22, inclusive of the certified record.

Exhibits "B" "C" and "D" to said amended bill of complaint being found on pages 23, 24, 25, 26, 27, of the certified record.

Defendant's answer being found on pages 35 to 51 inclusive, of the certified record.

Complainant's replication being found at page 56 of the certified record.

Decree of the circuit court found at page 59, of the certified record.

Appellant's assignment of errors, found at pages 60, 61, and 62, of the certified record.

Appellant's petition for appeal, and order granting appeal, found at pages 63, 64, and 65, of the certified record.

Evidence of George M. Myers, found at pages 66 to 171 inclusive of the certified record, but excepting and excluding from said testimony and not printing the following.

"A." Articles of association of the Southwest Missouri Light Company, commencing at page 66 of the certified record.

"B." Certificate of incorporation of the Southwest Missouri Light Company. Found on page 69 of the certified record.

"C." Trustees' deed commencing on page 70 of the certified record.

"D." Contract between City of Joplin, and Southwest Electric Light and Water Power Company, date Feb. 21st, 1894, commencing on page 76 of the certified record.

"E." Certified copy of extract — minutes Joplin city council, of date May 9th, 1899, relating to extension of contract. Commencing at page 79 of the certified record.

"F." Certified transcript of order of county court, to set poles in highway. Commencing on page 81 of certified record.

"G." Articles of association and certificate of incorporation of Merchants' Electric Light and Motor Company. Commencing on page 82 of the certified record. The articles dated June 2, 1892, and certificate dated; June 27, 1892.

414

"H." Agreement between Merchants' Electric Light and Motor Company, and Southwest Missouri Light Company of date May 23, 1896, commencing on page 91 of the certified record. Which documents "A" to "H" inclusive, were introduced in the record as parts of the testimony of said Myers, but are not parts of said testimony, and are not to be printed.

Parts of record which appellant deems necessary to be printed continued.

Certified copy of ordinance 441, being found on pages 85, 86, 87 and 88, of the certified record.

Acceptance of ordinance 441, being found on pages 89 and 90, of the certified record.

Deed from the Merchants' Company, to the Southwest Missouri Light Company commencing on page 97, of the certified record.

Inventory of property of the Southwest Missouri Light Company, commencing on page 103, of the certified record.

Evidence of H. M. Whitehead, Jr., being found on pages 172 to 193, inclusive, of the certified record.

Evidence of Charles E. Hodkins, being found on pages 194, to 202 inclusive, of the certified record.

Evidence of E. C. H. Squire, being found on pages 203 to 223, inclusive of the certified record.

Evidence of L. A. Fillmore, being found on pages 224 to 242, inclusive of the certified record.

Evidence of J. W. Freeman, being found on pages 243, to 261 of the certified record.

Defendant's evidence.

Evidence of E. C. H. Squire, being found at pages 262, to 274, of the certified record.

Evidence of J. R. McDonald, being found at pages 287, to 300, inclusive of the certified record.

Evidence of George T. Bayne, being found at pages 321 to 332, inclusive of the certified record.

415 Evidence of J. W. Moore, being found on pages 337 to 338 inclusive of the certified record.

Evidence of Harmon Cline, being found on pages 341, and 342, of the certified record.

Evidence of J. H. Dawson, being found on pages 356 to 359, inclusive, of the certified record.

Opinion of the Hon. Samuel McPherson acting judge of the circuit court of the United States, for the western division of the western district of Missouri, being found at page 400, of the certified record.

CITY OF JOPLIN, *Appellant*,
By C. H. MONTGOMERY AND
MESSRS. LATHROP, MORROW,
FOX & MOORE, &
SAMUEL W. MOORE,
Solicitors for Appellant.

Copy of above assignment of errors and designation of parts of record which appellant deems necessary to the consideration thereof, is hereby accepted this 28th day of June, 1902.

Kansas City, Mo., June 28, 1902.

TRIMBLE & BRALEY,
JNO. A. EATON,
Solicitors for Respondent.

[Endorsed:] Original. Return this with Trimble & Braley's acceptance on last sheet on inside, or serve and return soon as possible to C. H. Montgomery, Joplin, Mo.

416 [Endorsed:] File No. 18482. Supreme Court U. S., October term, 1902. Term No. 295. City of Joplin, app't, *vs.* Southwest Missouri Light Company. Statement of errors & designation by appellant of parts of record to be printed. Filed July 3, 1902.

417 In the Supreme Court of the United States.

THE CITY OF JOPLIN, Appellant,
vs.
SOUTHWEST MISSOURI LIGHT COMPANY, Appellee.

Comes now the appellee, The Southwest Missouri Light Company having been served with a copy of the assignments of error upon which the appellant desires to rely, and a specification of the portions of the record which said appellant desires to have printed, and the said appellee now here designates the following additional portions of said record, which it desires to have printed, namely:—

1. All of the testimony of the respective witnesses named by the appellant in its designation of parts of the record to be printed.
2. The articles of association of the Southwest Missouri Light Company, commencing at page 66 of the certified record.
3. The certificate of incorporation of the Southwest Missouri Light Company, found at page 69 of the certified record.
4. Trustee's deed commencing on page 70 of the certified record.
5. Contract between the City of Joplin and the Southwestern Electric Light and Water Power Company, dated February 21st, 1894, commencing on page 76 of the certified record.
6. Certified copy of the abstract of minutes of the Joplin city council, of date of May 9th, 1899, relating to extension of contract, commencing at page 79 of the certified record.
7. Certified transcript of order of county court to set poles in highways, commencing on page 81 of the certified record.
8. Articles of association and certificate of incorporation of the Merchants' Electric Light & Motor Company, commencing on page 82 of the certified record, said articles being dated June 2nd, 1892, and certificates dated June 27th, 1892.

418 9. Agreement between Merchants' Electric Light & Motor Company and Southwest Missouri Light Company, dated May 23rd, 1896, commencing on page 91 of the certified record.

10. Documents "A" to "H" inclusive introduced in connection with the testimony of witness Geo. M. Myers.

11. That part of the record which shows the introduction in evidence of Exhibits "B," "C," "D," attached to the amended bill of complaint, being ordinance number 1160 of the city of Joplin, approved February 7th, 1899, published in the Joplin Daily News, February 9th, 1899; ordinance number 1165 of the city of Joplin, approved March 1st, 1899, and ordinance number 1175, of the city of Joplin, approved March 22nd, 1899.

12. The written agreement executed of date May 23rd, 1896 between the Merchants' Electric Light & Motor Company and the Southwest Missouri Light Company.

13. Original inventory of property of date March 20th, 1897, contained and shown in the testimony of witness Geo. M. Myers.

14. All of the testimony of witness A. Knoche, called on the part of the defendant in the court below.

J. McD. TRIMBLE &
JNO. A. EATON,
Solicitors for Appellee.

Copy received Aug. 5, 1902.

C. H. MONTGOMERY,
S. W. MOORE,
Solicitors for Appellant.

419 [Endorsed:] Filed No. 18,482. Supreme Court U. S., October term, 1902 Term No. 295. The City of Joplin, appellant, *vs.* Southwest Missouri Light Co. Designation by appellee of additional parts of record to be printed & acceptance of service of same. Filed Aug. 11", 1902.

Endorsed on cover: File No. 18,482. W. Missouri C. C. U. S. Term No. 295. City of Joplin, appellant, *vs.* Southwest Missouri Light Company. Filed April 8", 1902.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1902.

CITY OF JOPLIN, *Appellant,*

vs.

SOUTHWEST MISSOURI LIGHT COMPANY, *Respondent.*

No. 295.

Statement of Case, Brief and Argument for the Appellant.

STATEMENT OF CASE.

This is a proceeding instituted in the Circuit Court of the United States for the Western District of Missouri by way of a bill in equity in the name of the Southwest Missouri Light Company against the City of Joplin, to enjoin the latter from supplying or furnishing to the inhabitants of the City of Joplin incandescent lights or other electric lighting as was being done by it at the time of the institution of this action.

THE BILL OF COMPLAINT.

The amended bill of complaint (Record 3-9) contains substantially the following allegations:

The City of Joplin on October 7th, 1891, passed municipal ordinance No. 441, a copy of which is set forth in the brief *infra*, granting to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Charles Ragin, partners doing business under the name of the Merchants' Electric Light & Motor Company and to their successors and assigns, the right, power, privilege and authority within said city to build, erect, maintain, construct and operate all necessary and convenient electric light and motor plant apparatus, machinery and appliances for the generation of electricity; to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power and for other purposes for the period of twenty years from the granting of the franchise, and the said J. C. Cox, Jr., and his associates were authorized and invested with the full power to erect and maintain on, over and under the streets, alleys, avenues, lanes and public grounds of the City of Joplin, poles, masts and other proper supports and to carry, suspend and string wires thereon and therefrom, and to lay down within such streets, avenues, alleys and lanes beneath the surface thereof such proper pipes, wires or conduits as might be necessary or convenient for the purposes aforesaid, and to maintain and operate, repair and renew the same as might be necessary or convenient, and to occupy the streets, avenues, alleys and lanes of the city as might be necessary.

It is also provided in said ordinance that the said John C. Cox, Jr., and his associates should not charge for electric arc lights furnished by them more than the following sum per month, viz: For 10 o'clock circuit, not to exceed the sum of $8.00 per light; for 12 o'clock circuit, not to exceed the sum of $10.00 per light; for all night circuit, not to exceed the sum of $12.00 per light; for incandescent lights, for 16 C. P., for 10 o'clock circuit, not to exceed the sum of 90c., and for all night circuit not to exceed the sum of $1.00 per light.

It was further provided in said ordinance that said John C. Cox, Jr., and his associates should maintain and keep in order, without charge to the City of Joplin, one light so erected on the front porch of Freeman's Foundry in the City of Joplin so as to light the Frisco crossing thereat in said city. It was further provided in said ordinance that said John C. Cox, Jr., and his associatee should, within ten days from and after the date of the passage of said ordinance, file with the City Clerk of the City of Joplin their written acceptance of the rights and privileges granted by said ordinance and subject to the conditions therein imposed. And that unless John C. Cox, Jr., and his associates should begin work in good faith within sixty days from the approval of said ordinance and have work in operation within four months, the ordinance should be void and of no effect, and that the said John C. Cox and his associates should further agree to pay for the publication of said ordinance, and upon their refusal so to do, then the ordinance should be deemed null and void.

It is further alleged in the bill of complaint that the said John C. Cox, Jr., and others did within

the time prescribed in said ordinance file their written acceptance of the same as required by it, and did pay for the publication of the ordinance, and did begin work contemplated by the ordinance within sixty days from its approval, and did have the work in operation within four months from the time of the approval of the ordinance, and did fully comply on their part with all the obligations, covenants and conditions imposed upon them by said ordinance No. 441, aforesaid.

It was further alleged that the work performed by the said John C. Cox, Jr., and his associates, under the said ordinance consisted in the construction of an electric motor plant, the erection of poles and wires strung thereon along the streets of the City of Joplin, together with all necessary and suitable equipment and appliances for conducting and operating the business of furnishing motor power and light to the City of Joplin and the citizens thereof, and additions thereto; that the power plant, equipments and appliances for furnishing such light and power, together with the subsequent repairs and improvements of the same, were procured, erected and constructed by the said Cox and his associates and their grantees at the expense of $15,000 or thereabouts.

On June 7, 1892, the Merchants Light & Motor Company was duly incorporated pursuant to the laws of the State of Missouri, and as a body corporate it thereupon succeeded to and became the owner of the motor plant, poles, wires, equipment, appliances and other property theretofore owned, including the franchises and privileges granted by said ordinance No. 441, to said John C. Cox, Jr., and his associates, and the said Merchants Light & Motor Company operated and conducted its electric motor

and light plant and business aforesaid until the sale and transfer thereof to the complainant as hereinafter stated.

Thereafter, on December 28, 1895, this complainant was duly incorporated under the laws of the State of Missouri, with full power to operate electric and gas works and appliances to furnish light and power to the City of Joplin, to the inhabitants thereof and its vicinity. Thereafter, on June 9, 1896, by its bill of sale duly executed, the Merchants Electric Light & Motor Company did, in consideration of the sum of $15,000, paid to it by the complainant, sell, assign and deliver to this complainant the poles, lines and other equipment, appliances and property of Merchants Electric Light & Motor Company, hereinbefore referred to, including the franchise granted by said ordinance No. 441, and complainant became the assignee and owner thereof, and complainant did thereupon enter into possession of said property, equipment and appliances, and has since said time been conducting and furnishing, under said franchise so assigned to it, the business of furnishing electric lights to the inhabitants of the City of Joplin.

It is further alleged that the defendant City of Joplin has constructed an electric light plant to be owned, controlled and operated by said city, and has not only erected arc lights on the streets of said city and is therewith furnishing its streets and alleys with arc electric lighting, but said city, by its mayor and council and other officers, has also erected poles along the streets and alleys of said city, and has strung the same with wires, and has purchased transformers, and has established a schedule of rates and prices and solicits patrons and customers, and has since February 23, 1900, last past, and is still

doing ordinary commercial electric lighting in said city and the additions thereto, and is thereby entering into competition with the complainant in the matter of supplying and furnishing for pay to the inhabitants of said city and its additions incandescent lights or other electric lighting for the residences, places of business and like places, and is thereby depriving the complainant of rentals, income and profits in the matter of supplying said inhabitants aforesaid with electric lighting under the franchise above mentioned.

It is further alleged that the acts and proceedings of the defendant and its officers and servants in erecting its own electric light plant, in furnishing and supplying its inhabitants with incandescent or other electric lights and otherwise entering into competition with complainant in the matter of doing ordinary commercial electric lighting in the said city of Joplin and its additions, have been done and purport to have been done under the authority of two-thirds votes of the electors of said city, authorizing the increase of its municipal indebtedness for the purpose of erecting said electric light plant and also under and pursuant to ordinances of said city, duly passed by its council and approved by its mayor.

It is further stated that the complainant has invested a large amount of capital in the business of furnishing and supplying to the inhabitants of the City of Joplin and its vicinity electric lighting and electric motor power under the franchises before mentioned and assigned to it; that the franchise is a valuable one and that its value and the value of the complainant's property used in connection therewith will be greatly impaired and perhaps wholly destroyed if the City of Joplin is permitted to continue

its competition with the complainant in supplying and furnishing to the inhabitants and residents of defendant electric lighting and to thereby deprive the complainant of rentals, profits, incomes and sources of revenue it would otherwise receive from the citizens and inhabitants of Joplin in its business of furnishing and supplying to them electric lighting under its said franchise heretofore mentioned; that great pecuniary damage, loss and hardship is thereby being inflicted and will continue to be inflicted upon the complainant; that the complainant is the owner of real and personal property situated in the City of Joplin and assessed by it for municipal taxation, and that by reason thereof the complainant, unless relief is accorded to it, will be compelled, through such taxation on its said property, to aid and assist in operating and maintaining defendant's electric plant and business as a rival and competing one with the complainant's own electric plant and business, all of which will be highly inequitable and unjust and in violation of the complainant's rights in the premises.

It is further alleged that the conduct and acts of the defendant in so entering into competition as aforesaid with the complainant in the matter of supplying and furnishing the citizens of defendant and its vicinity electric lighting as hereinbefore mentioned, violates and sets at naught, to the complainant's great injury and damage, the clause of the Constitution of the United States (contained in Article I, section 10, of said instrument) which provides that no state shall pass any law impairing the obligation of contracts, and also violates the further provision of the Constitution of the United States, contained in Article 14, Section 1, thereof, which provides that no state shall deprive any person of property without due process of law.

The complainant further states that it is without adequate remedy at law to prevent the wrongs and injuries to it contemplated and threatened by defendant, and that the matter in dispute exceeds the sum of $2,000, exclusive of interest and costs.

The prayer of the bill is for a temporary injunction restraining and enjoining the defendant, its officers, agents and servants, from supplying or furnishing to the inhabitants of the City of Joplin, or of additions thereto, incandescent lights or other electric lighting, and for an assessment of damages for whatever wrongs and injuries the complainant has suffered by reason of the defendant's acts and conduct and for further relief.

THE ANSWER.

The defendant admits that on October 7, 1891, ordinance No. 441 was duly passed and approved and that it granted to John C. Cox, Jr., and his associates under the name and style of the Merchants Electric Light & Motor Company, their successors and assigns, the right, power, privilege and authority within the City of Joplin and such additions as might be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity; to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing heat, light, motor power and for other purposes for the period of twenty years from the granting of the franchise, and for that purpose John C. Cox, Jr., and his associates were given the

right, power, privilege and authority within the City of Joplin and such additions as might be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity; to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power and for other purposes for the period of twenty years from the granting of said franchise, and the said John C. Cox, Jr., and his associates were by said ordinance authorized and invested with the full power to erect and maintain on, over and under the streets, avenues, alleys, lanes and public grounds of the City of Joplin, poles, masts and other proper supports, and to carry, suspend and string wires thereon and therefrom, and to lay down within such streets, avenues, alleys and lanes, beneath the surface thereof, such property, pipes, wires or conduits as might be necessary or convenient for the purposes aforesaid, and to maintain and operate, repair and renew the same, as might be necessary or convenient, and to occupy the streets, avenues, alleys and lanes of said city as the same might be necessary.

It is further admitted that it was also provided in said ordinauce that the said J. C. Cox, Jr., and his associates should not charge for electric arc lights furnished by them more than the following sum per month, viz: For 10 o'clock circuit, not to exceed the sum of $8.00 per light; for 12 o'clock circuit, not to exceed the sum of $10.00 per light; for all night circuit, not to exceed the sum of $12.00 per light; for incandescent lights, of 16 C. P., for 10 o'clock circuit, not to exceed the sum of 90c, and for

all night circuit, not to exceed the sum of $1.00 per light.

The defendant further admitted that it was also provided in said ordinance that said John C. Cox, Jr., and his associates therein mentioned, should maintain and keep in order, without charge to the City of Joplin, one light erected on the front porch of Freeman's foundry in said city of Joplin, so as to light the Frisco crossing thereat in said city.

The defendant further admitted that it was provided in said ordinance that J. C. Cox, Jr., and his associates, should within ten days from and after the passage of said ordinance file with the city clerk of the City of Joplin, their written acceptance of the rights and privileges granted by said ordinance and subject to the conditions therein imposed.

The defendant further admitted that it was likewise provided in said order that unless the said J. C. Cox, Jr., and his associates, should begin work withix sixty days from the approval of said ordinance and have work in operation within four months, then said ordinance No. 441 should be void and of no effect. And it was further provided that said John C. Cox, Jr., and his associates, should further agree to pay for the publication of said city ordinance upon presentation of the bill for same and that upon their refusal to pay said bill or cost of publication, then said ordinance should be deemed null and void, until such conditions were complied with.

It is further admitted by defendant that the said John C. Cox, Jr., and his associates, doing business under the firm name and style of the Merchants Electric Light & Motor Company, did, within the time prescribed in said ordinance, file their writ-

ten acceptance of the same with the clerk of said said City of Joplin, subject to all the conditions imposed and contained in said ordinance, but as to whether the said J. C. Cox, Jr., and his associates did pay for the publication of said ordinance, as therein provided, or did begin the work contemplated by said ordinance within sixty days from its approval, or did have said work in operation within four months from the time of the approval of said ordinance, or did fully comply on their part with all the obligations, covenants and conditions imposed upon them by said ordinance, the defendant had not sufficient information on which to base a belief and therefore denied the same and the defendant alleged that immediately after the purchase of an undivided five-sixths interest in said franchise granted by ordinance No. 441, as hereinbefore stated, by complainant, to-wit, June 9th, 1896, the complainant repudiated said franchise and refused in any manner to comply with or be bound by the conditions imposed by it.

Defendant further admitted that the work performed by the said J. C. Cox, Jr., and his associates under said ordinance consisted in the construction of electric light motor plant, the erection of poles with wires strung thereon along the streets of the City of Joplin, together with all necessary and suitable equipments and appliances for conducting and operating the business of furnishing motive power and lights to the City of Joplin and the citizens thereof and additions thereto, and admits that said power plant, equipments and appliances for furnishing said light and motive power, together with the subsequent repairs and improvements of the same, were procured, erected and constructed by the grantees of said franchise at an expense to them of about $14,-

000; that the said electric light plant erected in the City of Joplin by the Merchants Electric Light & Motor Company, under the provisions of said ordinance No. 441, consisted of: One brick building about 25x100 feet, ground dimensions, and the ground on which it stood, of the value of about $3,000; one pole, line and incandescent dynamo, purchased of the Joplin Gas & Coke Co., of the value of about $2,000; one large combination arc and incandescent dynamo, of the value of $2,000; one 35-arc light dynamo, of the value of $1,000; one 150 H. P. Corliss engine and one 150 H. P. stationary tubular boiler, of the value of $3,000; extension pole line, $2,000; arc lamps, electric fans and materials, of the value of about $1,000.

The defendant alleged that the complainant did not purchase or become the owner of all of said plant, but only purchased the pole line and extension, of the value of about $4,000; the large combination arc and incandescent dynamo, of the value of about $1,000, also arc lamps, electric fans and materials, of the value of about $1,000; that the complainant did not purchase or become the owner of the building or ground, neither did it become the owner of said boiler or engine, but that said electric light plant was dismantled immediately after said sale, and the said building, grounds, boiler and engine were conveyed to other parties and ceased to be a part of said electric light plant; that immediately after the purchase of said part of said plant by the complainant, the said pole line was dug up and taken away and the wires were torn down and removed from said line; that the large arc and incandescent dynamo was removed from said plant and sent to Port Arthur, Texas, and the 35-arc dynamo was taken by complainant out of the City of

Joplin and out of Jasper county; and defendant alleged that since the year 1896 there has not been kept or maintained within said city or additions thereto the electric light plant or any part thereof erected under the provisions of said ordinance No. 441, nor has there been any electric light plant maintained in said city, nor in any addition thereto, by complainant since said time.

The defendant further alleged that John C. Cox, Jr., and his associates were required by the provisions of ordinance No. 441, to at all times keep and maintain within the City of Joplin, or within the additions thereto, an electric light and power plant sufficient at all times to supply the reasonable demand for public and commercial lighting within said city and additions.

It was further admitted that on or about June 2, 1892, the Merchants Light & Motor Company was duly incorporated pursuant to the laws of the State of Missouri, and that said body corporate thereupon succeeded to and became the owner of the motor plant, poles, equipments, appliances and other property hereinbefore mentioned, owned and held by said Merchants Light & Motor Company at the time of and prior to its incorporation aforesaid, including an undivided five-sixths interest of the franchise and privilege granted by said ordinance No. 441, to John C. Cox, Jr., and his associates, and that complainant as such successor operated and conducted its said motor light plant and business aforesaid until the sale and transfer of part of the same to the complainant as heretofore stated.

The defendant admits that on December 28, 1895, the complainant was duly incorporated under laws of the State of Missouri, with full power being conferred upon it by its charter to operate electric

and gas works and appliances to furnish light and power to the City of Joplin and the inhabitants thereof and its vicinity.

The defendant further admits that on June 9, 1896, by its bill of sale duly executed, the Merchants Electric Light & Motor Company did, in consideration of the sum of $15,000, paid to it by the complainant, sell, assign and deliver to complainant a part of the property of said electric light and motor company, as above stated, including an undivided five-sixths interest in the franchise granted by the said ordinance No. 441 of defendant therein to John C. Cox, Jr., and his associates, and the defendant has been informed and believes that an undivided one-sixth interest in said franchise was never assigned to complainant, but is now owned by J. V. Pierce, and defendant has been informed and believes that before the assignment by the Merchants Electric Light & Motor Company to complainant, and whilst said Merchants Electric Light & Motor Company was operating under the provisions of the franchise granted by said ordinance No. 441, said Merchants Electric Light & Motor Company entered into contract with various parties, but that after the aforesaid assignment to complainant by said Merchants Electric Light & Motor Company, said complainant repudiated said contract so made under the provisions contained in ordinance No. 441, and refused to furnish any of the lights to be furnished under said contract.

After the incorporation of the Merchants Electric Light & Motor Company, but before the assignment and sale of a part of its property and five-sixths interest in said franchise, an arrangement was entered into by and between the City of Joplin and

the Merchants Electric Light & Motor Company, by which the latter agreed to maintain and keep in order, without charge to the City of Joplin, one light, so erected on poles in front of Freeman's foundry in the City of Joplin as to light the Frisco railway crossing thereat in said city, in lieu of said light to be so kept and maintained on the front porch of said Freeman's foundry, and the said Merchants Electric Light & Motor Company did, for a long time, under said arrangement, maintain said light in order, free of charge to said city, and did maintain the same until the sale to complainant on the 9th day of June, 1896, but immediately after said sale the plaintiff presented a bill to the defendant City for the maintenance of said light and refused to maintain said light free of charge to the city, either on the front porch of Freeman's foundry, as required by ordinance No. 441, or on poles in front of Freeman's foundry in said city, or at any place in said city, and the complainant immediately after the said sale repudiated the provisions of said ordinance requiring the maintenance of said light and have refused to be bound by the same from the time of the said assignment up to the voting of the bonds and the building of the electric light plant of said city, and have failed and refused ever since said assignment to be bound by the provisions of said franchise relating to the maintenance of said light and have ever since said time refused to comply with any of its provisions whatever.

The defendant admits that the City of Joplin has constructed an electric plant to be owned, controlled and operated by said city, and has erected lights in the streets of said city, and is furnishing its streets and alleys with arc electric lighting; admits that said city, by its mayor, council and other

officers, had, prior to this suit, also erected poles along the streets and alleys of said city, and prior to said suit strung the same with wires, and had prior thereto purchased transformers and established a schedule of rates and prices, and was before said suit soliciting patrons and customers and had since February 23, 1900, and up to the time of the granting of the injunction herein was doing ordinary commercial lighting in said city and the additions thereto.

The defendant admits that it was entering in the ordinary manner into legitimate competition with complainant in the matter of supplying or furnishing for pay the inhabitants of defendant and its additions incandescent light or other electric lighting for their residences, places of business and like places, but denies that the defendant would thereby deprive complainant of rentals, income and profits in the matter of supplying said inhabitants aforesaid with electric lighting under the franchise granted by ordinance No. 441.

Defendant further admits that the aforesaid acts and proceedings of the said defendant and of its officers and servants in erecting its own electric light plant and in furnishing and supplying its inhabitants with incandescent or other electric lights and in otherwise entering into competition with complainant in the matter of doing ordinary commercial electric lighting in said City of Joplin and its additions, as in complainant's bill set out, have been done and purport to have been done under the authority of a two-thirds vote of the electors of said city authorizing the increase of its municipal indebtedness for the purposes of erecting said electric plant, and also under and pursuant to ordinances of

said city, duly passed by its council and approved by its mayor.

The defendant denies that complainant has a large amount of capital invested in said business of furnishing and supplying to the inhabitants of the City of Joplin and its vicinity electric lighting and electric motor power under said franchise, and defendant denies that the franchise granted by ordinance No. 441 is a valuable one, denies that complainant's property will be greatly impaired or in any manner destroyed if defendant is permitted to continue its competition with the complainant in supplying and furnishing to the inhabitants and residents of defendant said electric lighting, as above stated, and denies that complainant would be deprived of rentals, profits, incomes or sources of revenue it would otherwise receive from the citizens and inhabitants of Joplin in the business of furnishing and supplying to them electric lighting under said ordinance, and defendant admits that complainant is and at the time of bringing of this suit was the owner of a part of a town lot with a one-story building thereto, used for an office in said city, of the value of $2,000, and personal property within said city of the value of $5,000, used by complainant in doing a lighting business in defendant city, the electricity being generated at a plant at Grand Falls, in Newton county, about five miles from said City of Joplin.

The defendant denies that the acts of defendant in entering into competition with complainant in the matter of supplying and furnishing to the citizens of defendant and its vicinity electric lighting violate or set at naught, to complainant's injury or damage, the clause of the Constitution of the United States, contained in Article I, Section 10, of said instru-

ment, which provides that no state shall pass any law impairing the obligation of contracts; neither do they violate or set at naught the provisions of the Constitution of the United States, contained in Article 14, Section 1, thereof, which provides that no state shall deprive any person of property without due process of law, and defendant admits that the matter in dispute herein exceeds the sum of $2,000, exclusive of interest and costs.

On the 21st day of February, 1894, the City of Joplin entered into a contract in writing with the Southwestern Electric Light & Water Power Company, a corporation organized and existing under the laws of the State of Missouri, said corporation being composed substantially of the same stockholders that now compose the complainant company, by the terms of which contract the Southwestern Electric Light & Water Power Company agreed for a period of five years from the first day of May, 1894, to the first day of May, 1899, to be bound in the sum of $10,000 to furnish said city with as many arc lamps to light the streets of said city as the council might desire, and by resolution order from time to time; said lamps to be of full 2,000 C. P., kept and maintained at that standard, lighted at sunset and continued lighted until sunrise, at all times, at and for the price of $72 per year for each and every arc light so furnished.

The defendant City of Joplin duly complied with all and performed all the conditions of said contract on its part to be performed; that at the time of making said contract there was a mortgage or deed of trust on all the property and assets of the Southwestern Electric Light & Water Power Company for the sum of about $200,000, and on the — day of April, 1896, said mortgage was foreclosed, and

all the assets and property of said corporation were sold and conveyed away to the complainant at trustee's sale. Immediately after said sale complainant *repudiated said contract and refused to be bound by* any of its terms and refused from said — day of April, 1896, to the time of the issuing of the bonds and the building of the light plant of the said city defendant, to enter into any satisfactory contract with said city to light the streets of said city, although often requested by defendant so to do.

The defendant further states that from the time of foreclosure and sale of the assets and property of the said Southwestern Electric Light & Water Power Company in April, 1896, up to the time of the voting of the bonds of said city and the building of said city plant, the defendant city had no contract with any individual or corporation to light the streets of said city except a temporary arrangement with complainant to furnish lights to light the streets of said defendant city, and which was attended with much annoyance and inconvenience to said city and its citizens, that is to say, that the lights furnished were of a very poor quality and not nearly of 2,000 candle power; that they were subject to frequent interruptions and were only kept burning about two-thirds of the time. The defendant is informed and believes that from the time the complainant commenced business in 1896 until the vote of the bonds and the building of the plant of the defendant city there was no person or corporation in or near said city that had the capacity or facilities to adequately supply the demand for commercial and street lighting in the district in which the complainant did a lighting business.

Defendant further states that the City of Joplin and the territory contiguous and contributory to it

has and for the last four years has had a population of about 100,000 people; that it is and during all the said time has been a district engaged in mining, of which Joplin has been the center, as well as a railroad center, and there is constantly attracted to it a lorge floating population; that defendant has a population of about thirty thousand people; that for this reason and others it is necessary that the streets, alleys and public grounds should be at all times adequately lighted with reliable street lights; that on the first day of September, 1899, the complainant absolutely refused to longer furnish said city with any lights for its streets, alleys, or public grounds; that from said date until the 16th day of February, 1900, the time of the completion of said city light plant, the said streets, alleys and public grounds in said city were in darkness; that the defendant is informed and believes that all the property of complainant is, and has been ever since it was incorporated, subject to a large mortgage or deed of trust of about $150,000, and which is liable to foreclose at any time and which constitutes a prior lien to any contract the city might have made with complainant, and which foreclosure would have terminated any contract the defendant might have made with the complainant, and the defendant alleges that the complainant never, at any time prior to the building of the said electric light plant of defendant city, offered to enter into a time contract with the defendant or give security for its performance.

The defendant further alleged that it was and would be impracticable to operate the said city light plant for street lighting alone, without running the same in connection with commercial lighting; that to operate said city plant for the sole purpose of

lighting the streets, alleys and public grounds of said city, will entail an expense far greater than would be a reasonable charge for such lighting, and that the operation of said plant for said street lighting alone will result in large and unnecessary taxes levied upon the tax-payers of the city; that the city light plant can be operated in connection with commercial lighting, so that there will be no expense to the defendant city nor its tax-payers, for such operation.

A general replication was filed by the complainant.

ASSIGNMENT AND SPECIFICATION OF ERRORS.

The assignment of errors challenges the correctness of the action of the Circuit Court, upon nine grounds, all of which were duly assigned (Record, 25–26). They are as follows:

1. That by the said record aforesaid, it appears that the order, judgment and decree aforesaid was given for the complainant, Southwest Missouri Light Company, against the defendant, City of Joplin, whereas, by the law of the land the said judgment ought to have been given for the said defendant, City of Joplin, and against the said plaintiff, Southwest Missouri Light Company.

2. That the Circuit Court erred in holding that the bill of complainant, Southwest Missouri Light Company, was sufficient to state a cause of equitable relief against the defendant, City of Joplin.

3. That the Circuit Court erred in holding that the act of the Missouri legislature of 1891 (Laws of Mo., 1891, p. 60), gave to cities of the third class the right to erect, maintain and operate electric light works or to contract for their erection, maintenance and operation, in the alternative, and that such act did not confer upon said cities the right to exercise both of said powers at the same time.

4. That the Circuit Court erred in holding that the ordinance of the City of Joplin of February 7, 1899, and proceedings subsequent thereto, impaired the obligation of the contract with the complainant, contained in the ordinance of October 7, 1891, granting a franchise to the complainant's assignors.

5. That the Circuit Court erred in holding that it was an implied condition in the franchise of

October 7, 1891, to complainant's assignors, that the City of Joplin would not engage in the erection, maintenance and operation of an electric light plant for the supply of electric light to its inhabitants during the period of said franchise.

6. That the Circuit Court erred in holding that the act of the legislature (Laws of Mo., 1891, p. 60), conferred upon the City of Joplin the right to construct, maintain and operate an electric light plant for the supply of its inhabitants with electric light, or to contract for the erection, maintenance and operation of an electric light plant for the same purpose, in the alternative, but that both powers were not conferred, and at the same time, in holding that the court had jurisdiction to entertain the bill and render a decree against the defendant.

7. That the Circuit Court erred in not finding that the complainant failed in a substantial degree to comply with the terms of the franchise of October 7th, 1891, and for that reason was not entitled to the equitable relief prayed for.

8. That the Circuit Court erred in not holding that the complainant had repudiated the franchise of October 7, 1891, upon which complainant bases its claim for equitable relief, and for that reason was not entitled to the relief prayed for.

9. That the Circuit Court erred in holding that the ordinance of the City of Joplin of October 7, 1891, upon which complainant bases its claim for equitable relief was exclusive in its character and disabled the City of Joplin, defendant, from afterwards erecting, maintaining and operating an electric light plant of its own for the supply of electric light to its inhabitants.

EVIDENCE.

Ordinance 441, which is the foundation of the complainant's bill, is as follows (Rec. 1):

ORDINANCE No. 441.

An ordinance granting to John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas Ragin, doing business under the firm name and style of the Merchants' Electric Light *Light* & Motor Company, the right to erect and operate electric light and motor plants, with necessary conduits and appliances for the transmission, distribution, and application of electric light and electric motor power and regulating the same.

Be it Ordained by the Council of the City of Joplin, as follows:

SECTION 1. In consideration of the benefit to be derived therefrom, John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman, and Chas.
10 & 11. Ragin, and their successors and assigns, are hereby granted the right, power, privilege and authority, within the City of Joplin and such additions as may be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity, to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power, and for other proper purposes, for the period of twenty (20) years from the granting of this franchise, and for such purposes said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, their successors and assigns, are authorized and vested with full power to erect and maintain on, over and under the streets, avenues, alleys, lanes and public grounds of said city, poles, masts and other proper supports, and to carry, suspend and string wires thereon and therefrom, and to lay down within such streets, avenues, alleys and lanes, beneath the surface thereof, such proper pipes,

wires or conduits as may be necessary or convenient for the purpose aforesaid, and to maintain and operate, repair, and renew the same as may be necessary or convenient and to occupy the streets, avenues, alleys and lanes of said city as the same may be necessary for all the purposes aforesaid.

Provided, that the aforesaid work shall be done, and the rights hereby granted, exercised in such a manner as not to interfere with the rights or injure the property of other persons or corporations, and in every case where the surface of the streets, avenues, alleys, lanes or public ground is broken and holes or trenches dug therein, for the purpose aforesaid, they shall be repaired by said parties within twenty-four (24) hours and placed in as good a condition as before, and when

12. poles or masts are set through any sidewalks they shall be set next to the curb, and a hole of proper size carefully cut through the walk, so as not to break the same, and when set, the opening around the same shall be well filled with cement.

And provided, that all poles for lines parallel with alleys shall be erected in alleys except where necessary to cross streets, and to properly suspend street lights if contracted for by the city at any time.

SECTION 2. All poles or masts erected within the city limits shall be at least twelve (12) inches in diameter, and thirty (30) feet high from the surface of the ground, except poles carrying street lights, which shall be forty-five (45) feet high; and all wires used by the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, their successors or assigns, for the purpose of conveying and transmitting the currants of electricity shall be thoroughly insulated, or of such character as is approved by the board of underwriters, and same shall not be placed or located so as to interfere with any telegraph, telephone, street car or other electric wires now erected in the City of Joplin.

And when digging in the streets, alleys or other public places for any purpose, shall keep all openings well guarded, and keep red lights thereat at night to prevent any injury

therefrom. Upon failure of the said parties to use the poles, masts and towers aforesaid, they shall remove the same, and should they fail, neglect or refuse to do so, same may be removed by the City of Joplin as any other obstruction, at the expense and cost of the said company, their successors or assigns.

SECTION 3. The said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their successors and assigns, shall not be allowed to charge for electric arc lights furnished by them more than the following sums per month, viz:

For ten o'clock circuit not to exceed the sum of eight (8) dollars per light.

For twelve o'clock circuit not to exceed the sum of ten (10) dollars per light.

For all night circuit not to exceed the sum of twelve dollars per light.

13 For incandescent lights of 16 c. p. for ten o'clock circuit not to exceed the sum of $0.90, and for all-night circuit not to exceed the sum of $1.00 per light.

For one light erected on the front porch of Freeman's foundry, so as to light the 'Frisco railroad crossing on Main street, and to be maintained and kept in order without charge or expense to the city.

SECTION 4. The said Merchants' Electric Light & Motor Co. shall protect, indemnify and save harmless the City of Joplin at all time from expense, cost and damage for injuries sustained by any person or persons, or damage to property during the construction, repair or operation of said electric light and motor plants, or either of them, and if any suit shall be commenced against said city for any injury or damage occasioned by any act or thing done by said Electric Light & Motor Company, their successors or assigns, their agents, servants or employes during the construction, repair or operation of such electric light and motor plants, then the said Merchants' Electric Light & Motor Company, their successors and assigns, shall, at their own expense, join said City of

Joplin in defense against said suits, claims and actions, as well as pay off and satisfy any judgments that may be obtained against said city in such proceedings.

SECTION 5. The said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their successors or assigns, shall within ten days from and after the date of the passage of this ordinance, file with the City Clerk of the City of Joplin, their written acceptance of the right and privileges herein granted, subject to all the conditions herein imposed and said city clerk shall report the same to the city council.

Unless said parties, their successors or assigns, shall begin work in good faith within sixty (60) days from the approval of this ordinance, and have work in operation within four months, this ordinance shall be void and of no effect. Provided the said John C. Cox, Jr., H. H. Gregg, J. V. Pierce, John Wise, J. W. Freeman and Chas. Ragin, or their assigns, do further agree to pay for the publication of this ordinance upon presentation of bill for same; and upon its refusal to pay said bill or cost of publication, then this ordinance shall be deemed null and void until the above conditions are complied with.

SECTION 6. This ordinance shall take effect and be in force from and after its publication.

Approved October 7, 1891.

R. B. TYLER, Mayor.

Atttest: J. R. KAVANAUGH, City Clerk.

The grantees of this franchise incorporated under the name of the Merchants Electric Light & Motor Company (Rec., 39) and this Company, on June 9, 1896, duly conveyed all of its propery to the Southwest Missouri Light Company, the complainant herein (Rec., 48), and the complainant has been the owner of the franchise since that date.

On February 21, 1894, the City of Joplin and the Southwest Electric Light & Water Power Com-

pany entered into a contract for five years, beginning May 1st, 1894, and ending May 1st, 1899, for the lighting of the streets of the city with arc lights (Rec., 34). It is claimed by the complainant that when it acquired its electric light plant in 1896, as above stated, it assumed the contract last named and carried it out (Rec., 77).

On May 9, 1899, the City of Joplin and the complainant entered into a contract to continue the service of lighting the city, on the basis of the five year contractfor a further period of four months (R., 37). This additional four months contract expired September 9, 1899; after the expiration of this extension for four months, no further contract was made between the city and the complainant (R., 65).

On February 7, 1899, an ordinance was passed by the City of Joplin, calling a special election for the purpose of submitting to the qualified voters of the city a proposition to increase the indebtedness of the City of Joplin for the purpose of building an electric light plant, to be owned, controlled and operated by the city, and authorizing the council and officers of the city to issue bonds therefor and to provide a sinking fund to pay the same (R., 136). An election was duly had, and on March 1, 1899, an ordinance was passed declaring the result of the special election held on February 28, 1899, for the purpose aforesaid, and that the proposition was duly carried; also providing for the issue of bonds, in the sum of $30,000, to be known as the City of Joplin Electric Light bonds (R., 137). On March 22, 1899, the city passed an ordinance providing for the appointment of a Board of Managers for the City Electric Light plant and prescribing the duties thereof (R., 138). Work was accordingly begun

upon the city's plant and it was completed in February, 1900; lamps were erected for public lighting and the streets lighted thereby and the city also began to supply citizens with commercial lights. The city's plant cost $36,000. (R., 140, 141).

As soon as the city had begun to do commercial lighting, this injunction suit was brought and a temporary injunction issued (101 Fed., 23), which, on final hearing, was made permanent.

There was also a great deal of testimony tending to show that the lights supplied by the complainant were poor and unreliable, and that the city frequently cut down its bills for street lighting (R., 170, 183). There was also abundant testimony that the lights furnished by the complainant were poor, generally throughout the city (R., 158, 168, 177, 194).

It was clearly established by the evidence that about the first of September, 1896, and about three months after complainant purchased the franchise granted by ordinance No. 441, it ceased to operate the plant built within the City of Joplin, under that ordinance for the purpose of generating electricity to supply electric lights within said city, as required by the provisions of said ordinance; and in April, 1897, it dismantled and tore down this plant and never maintained thereafter within the defendant city, or its additions, any plant to generate electricity to supply said city with electric lights (R., 97, 98, 144, 157), as required by the provisions of ordinance No. 441 (R., 1, 2, 3).

The evidence negatives any idea of an exclusive right under franchise 441. A number of electric light franchises, and one gas franchise had been previously granted; and a gas company, and an electric light company, the predecessor of complainant,

were furnishing lights under such franchises in the City of Joplin at the very time when ordinance 441, under which complainant claims, was passed; and ordinance 441 was passed to secure competition in the lighting business (R., 142, 143, 129, 130, 155).

The evidence discloses that before complainant secured control of franchise ordinance 441, the provisions of that ordinance had been substantially complied with, but as soon as complainant became the owner of that franchise, by assignment, it repudiated the franchise granted by that ordinance and refused to act under it or be bound by its terms. Geo. T. Bayne, the superintendent of complainant for the two years immediately after said assignment, testified substantially as follows:

That complainant before and at the time that complainant became the assignee of ordinance 441, had been and was operating under a franchise known as the Sergeant franchise (R., 129, 130), which was a better and more liberal franchise for the company than ordinance 441.

That this Sergeant franchise did not require the company to maintain any free lights. For this reason he had elected to act under the Sergeant franchise and had refused to maintain this light under ordinance 441, when the city officials had demanded that he do so (R., 183 to 186). See also R., 193, 195, 167.

BRIEF.

I.

Ordinance 441 granted no exclusive right to the complainant.

The franchise granted in ordinance 441 was not exclusive nor does it contain any obligation on the part of the municipality not to compete with the owner of the franchise in commercial lighting or otherwise; nor is the use of the streets granted by the franchise an exclusive one.

The ordinance by its terms grants to the persons therein named the right and authority to erect and maintain electric light plants, etc., and power to place the poles and wires in the streets of the City of Joplin. The only obligation or duty created by this ordinance on the part of the city is to permit the erection of such electric light plant and the use of the streets for that purpose.

On the other hand, the grantees of the franchise assumed the following obligations:

(*a*) The plant is to be erected in the City of Joplin and additions thereto.

(*b*) The work done under the ordinance shall not injure the property of other persons or corporations, and the surface of the ground when disturbed shall be replaced, and poles or masts shall only be set through the sidewalk in a certain specified manner.

(*c*) Poles for lines parallel with alleys shall be erected in the alleys and the poles shall be of a certain size, a specified height, and the wires shall be insulated and shall not be placed so as to interfere with other wires carrying electric currents.

(*d*) When digging in the streets, alleys or

other public places, the grantees shall use certain precautions.

(*e*) The charge to be made for arc lights and incandescent lights shall not exceed a certain sum, and one light shall be maintained on the front porch of Freeman's foundry without expense to the city.

(*f*) The grantees shall indemnify and save harmless the city from loss or damage caused by the maintenance and operation of such plant.

(*g*) The grantees shall accept the ordinance in writing, and shall begin work within sixty days from the time of the passage of the ordinance and shall have the work in operation within four months thereafter, and also pay for the cost of publishing the ordinance.

The gravamen of complainant's bill is an impairment of the obligation imposed by the foregoing ordinance in its favor.

In examining the ordinance, we look in vain for any restriction upon the right of the city to grant other or similar franchises to other persons for the construction and operation of electric light plants; or to construct and operate an electric light plant itself for the purpose of supplying its citizens with light.

While it may be assumed, for the purpose of the argument, that there had been a contract between the city and the complainant, made subsequent to the granting of the franchise, by the terms of which the complainant was to furnish electric lighting to the city, yet at the time the city undertook the construction of its own plant, and at the time of the filing of this action, no contract existed between the parties. The ordinance created, neither directly nor indirectly, any obligation whatever upon the

city to contract with Electric Light Company for its lights. The ordinance amounts to a license to the complainant to use the city's streets, and that is all.

Had it been the intention of the parties to grant an exclusive franchise, or had the parties intended that the city should thereafter be disabled from erecting and maintaining an electric light plant in competition with the complainant, it would have been easy to have inserted in the ordinance words of restriction or limitation. The fact that we do not find them there, not only points to the conclusion as a matter of law that the contract did not grant an exclusive right to the complainant, but indicates that it was the intention of the parties that no such exclusive right should be granted or enjoyed.

II.

As the City of Joplin, by ordinance 441, did not expressly grant an exclusive franchise or expressly disable itself from erecting and maintaining an electric light plant, no such restrictions will be created by implication.

He who claims the grant of an exclusive franchise from a municipality must be able to point out the express terms by which the exclusive grant is created. The rights of the city and its citizens do not pass by uncertain or ambiguous language or by implication. Where a municipality is vested with certain powers, the law jealously guards their exercise and construes contracts of the nature now under consideration most favorable to the municipality.

The case of *Bienville Water Company* v. *City of Mobile,* 95 Fed., 539, was somewhat similar to the case at bar. It there appeared that on August

15, 1888, the complainant entered into a contract with the City of Mobile by which it agreed and contracted to furnish, for the use of the city, 260 fire hydrants, and to furnish water for fire service of a certain number of streams and pressure, and it further agreed that the city should have the unrestricted use of the hydrants for fire purposes. The complainant was authorized to construct all needed canals, ditches, etc., and agreed not to charge, during the continuance of the contract, for domestic use a greater or higher rate for water than that named or specified in the contract.

The bill averred that the complainant had complied with all of the obligations of the contract on its part, but that the City of Mobile was proceeding to violate its contract, in that on May 14, 1898, during the continuance of the said contract, it had bought and taken possession of the water works plant and was operating the same, selling water to customers and cutting rates below those fixed in the contract and actually competing in the business of selling and furnishing water to its inhabitants, thereby decreasing the complainant's income. The bill also averred that the defendant was building another system of water works to supply itself and its inhabitants with water. The city's charter provided that it had the right to contract for, build, purchase or otherwise acquire public works subject to the approval of a majority vote of the citizens at a special election called therefor. The city proceeded to hold an election and issued bonds and entered into the construction of a water works system and an action was brought for an injunction on the ground that the obligation of the complainant's contract with the city was being impaired.

The court denied an injunction, and, after citing authorities, said:

> "Thus we have seen that the contract in every case to which our attention has been called, either provided for an exclusive right in the water company to supply water to the city and its inhabitants, granted or contracted for by the city, or contained a covenant by the city that it would not erect water works of its own and would abstain from granting the right to do so to a competing company during the life of the contract. We have seen that the contract under consideration in this case contains no such stipulation or agreement. We have seen that it does not attempt to grant any exclusive right to the complainant, and that it contains no provision that the complainant shall furnish water to the inhabitants of the City of Mobile, and no covenant by the city that it will not build or acquire water works of its own or abstain from supplying water to its inhabitants during the continuance of the contract. The parties might have made such a contract, but they did not do so. My conclusion then, is that the complainant has shown no legal grounds on which to grant it, the injunction prayed for in the bill."

The foregoing case was appealed to this court and is reported in 20 Sup. Ct. Rep., p. 40. The judgment of the lower court was affirmed, this court using the following language:

> "The charter provided that the city might contract for, build, purchase, or otherwise acquire public works subject to the approval of a majority vote of the citizens of Mobile at a special election called therefor; and in July, 1897, such an election was held, and a majority of the votes cast were in favor of the city contracting for or otherwise acquiring water works to be owned and operated by the city, and the issuing of bonds to pay for the same. The act of November 30, 1898, authorized the issuing of bonds for that purpose. It was further averred

that acting under and by virtue of the power granted by the charter, and the act of November 30, the city had entered into a contract to have a system of water works built, and that the building of the same was now going on, and that it had made a contract with certain persons to take said bonds, who had already taken and paid for a part of them. Complainant contended that the city had no legal right to impair the value of its plant and to destroy or diminish its income therefrom, which would be the effect of the city's action in building water works and furnishing water to its inhabitants, and it was averred that defendant was insolvent, and that the only way complainant could protect itself was through the interposition of a court of equity. It was not asserted by complainant that it had been granted an exclusive franchise to furnish water to the city and its inhabitants, but that under the contracts the city had no right to furnish water to other persons, or to build or acquire a system of water works to supply water to itself and its inhabitants, and that to do this was a violation thereof.

"The circuit court observed that the city of Mobile granted complainant no rights or privileges whatever, but that the legislature of the state granted it the right to build waterworks and to use the streets of the city for water purposes, and authorized complainant and the city to contract together for the purpose of supplying the city with water. The contract was made, but there was no express provision in it for furnishing the inhabitants with water, and no stipulation by complainant that it would do so, though it was clear that the parties contemplated that complainant would contract with the inhabitants to supply them with water for domestic purposes, since it was stipulated that complainant should not charge for water so supplied higher rates than those specified therein. On the other hand, the city was authorized and empowered by its charter and the act of the legislature of November 30, 1898, to build or otherwise acquire waterworks of its own to supply water to itself and its inhabitants for the extinguishment of fires and

for sanitary and domestic purposes, and the city in its contract with complainant did not agree not to do so. It did agree to pay complainant for a certain number of hydrants erected and supplied by it, and to make the payments monthly, but there was no averment that the city had by act or word repudiated its obligations, or failed or refused to make the payments stipulated for, or that it intended to do so.

"In short, there were no facts averred showing that the city had violated, was violating, or intended to violate, its contracts with complainant, and there was no legislation to that end. Such being the state of the case, the circuit court did not err in dismissing the bill and, as there was color for the motion to dismiss, the motion to affirm will be sustained. Decree affirmed."

The case of *Skaneateles Water Works Co.* v. *Village of Skaneateles*, 22 Sup. Ct. Rep. 400, is very similar in its facts to the case at bar. There, the village granted a franchise to the Water Works Company to maintain and operate within the village of Skaneateles a system of waterworks for furnishing the citizens of the village pure and wholesome water upon the terms and conditions stated in the franchise. The water company constructed its plant under this franchise and completed it about the year 1889, and put it in operation. The system was a complete and adequate one, no complaint having been made that the water furnished was not pure and wholesome, or that it had been inadequate for the purpose for which the system was erected.

On February 1, 1891, the Water company and the village entered into a contract for the supply of water and the erection of hydrants and for the payment of certain compensation therefor by the village. The contract was limited by its terms to the period of five years from February 1, 1891, and had

not been renewed since the time of its expiration, on February 1, 1896. After the latter date, without any proceedings to annul the franchise, the village proceeded to vote bonds for the erection of a water plant of its own and thereupon the Water Company brought an injunction against the village, claiming that the obligation of its contract was being impaired. This court held that the Water Company was not entitled to relief, and affirmed the decree of the Court of Appeals of New York, which had reached the same conclusion.

It was claimed in that case, as in the case at bar, that inasmuch as the village had two methods for obtaining a supply of water, by the erection of a plant itself or by contracting with a water company for a supply, and chose the latter method, "it impliedly contracted that it would not itself thereafter take the other method for obtaining such supply." The court said:

> "It would seem to be clear, under the decisions of this court, that the plaintiff in applying to the village and filing its certificate with the Secretary of State, under the act of 1873, acquired no contract right, expressed or implied, to any exclusive privilege of using the streets of the village for supplying it with water. * * * Indeed, this proposition is conceded by council for plaintiff, and it admits that the village, notwithstanding its grant to the plaintiff, possessed the power to grant to any other individual company the same kind of privilege it had already granted to plaintiff. But it denies the right of the village to avail itself of the authority to itself build and operate the works, given under the act of 1875, unless the plaintiff's plant be taken by purchase or condemnation."

Bearing in mind that the only right secured by the complainant in the case at bar was to erect its

poles and string its wires in the streets and alleys of the City of Joplin, and that at the time of the institution of this action there were no contract rights whatever between the city and the complainant, except ordinance 441, the following language is peculiarly applicable:

> "By virtue of its incorporation under this act of 1875, the plaintiff secured simply the right to be a corporation, and the authority to lay its water pipes in any of the streets and avenues or public streets of the village of Skaneateles. The village, however, as stated, was under no obligation to take water from the company. That was a matter for a subsequent contract between the parties. Admitting that in every grant there is an implication that the grantor will do nothing to detract from the full and complete operation of the grant itself, we cannot find any implication that after the termination of the contract the plaintiff and defendant were empowered to make, there should be no right in the defendant to build its own system of water works under the statute of 1875, unless it purchased or condemned the property of the complainant.
>
> "There is no implied contract in an ordinary grant of a franchise, such as this, that the grantor will never do any act by which the value of the franchise granted may in the future be reduced. Such a contract would be altogether too far reaching and important in its possible consequences in the way of limitation of the powers of the municipality, even in matters not immediately connected with water, to be left to implication. We think none such arises from the facts detailed."

In the recent case of *Freeport Water Co.* v. *City of Freeport,* 21 Sup. Ct. Rep., 493, it is held:

> "The power of a municipal corporation to grant exclusive privileges must be conferred by explicit terms. If inferred from other powers it is not enough that the power is convenient to other powers; it must be indispensable to them."

In *Pearsall* v. *Railway Co.*, 161 U. S., 664, it is said:

> "Hence an exclusive right to enjoy a certain franchise is never presumed, and unless the charter contains words of exclusion it is no impairment of the grant to permit another to do the same thing, although the value of the franchise to the first grantee may be wholly destroyed. This principal was laid down at an early day in the case of *Charles River Bridge* v. *Warren Bridge*, 11 Peters, 420, and has been steadily adhered to ever since."

The jurisdiction of this action is entirely dependent upon the averment in the bill that the obligation of the complainant's contract as contained in its franchise has been impaired. If jurisdiction fails upon this ground, it must fail entirely, since both complainant and defendant are residents of the State of Missouri. It is perfectly plain that if the complainant would enjoy, after the erection and operation by the City of Joplin of its electric light plant all of the rights secured to it under its franchise, then there has been no impairment of its contract. If we turn to the franchise itself, we submit that it is impossible to point to a single right or obligation secured to the complainant which it would not fully and freely enjoy if the city were today operating its electric light plant and lighting its own streets and furnishing electric lighting to its own citizens.

In *St. Paul Gas Light Co.* v. *City of St. Paul*, 21 Sup. Ct. Rep., 575, it appeared that the City of St. Paul had made a contract with the gas company, whereby the latter was to erect certain gas lights and the city was to pay a certain price for each lamp so erected by way of monthly compensation. The gas company afterwards, in certain portions of the city, used electric lights instead of gas lamps. The city council passed an ordinance requiring the gas

company to take up its gas lamps and remove the same, and declaring that no further payment should be made on account of the gas lamps. The gas company brought suit, alleging that the ordinance impaired the validity of its contract with the city to receive compensation in respect of such gas lamps, which were not in use. It was held that there had been no impairment of the contract, the court using this language:

> "Referring to the ordinance in question, from the provisions of which it is alone contended the impairment of the contract arose, it will be seen that only two subjects are therein referred to; the first, a command by the city to the gas company to 'forthwith remove the gas street lamp posts in that portion of the city now lighted by electric light under contract with the said company, which said lamps have been discontinued by order of the board of public works;' and, second, a declaration on the part of the municipal council of St. Paul of its intention not thereafter to pay the gas company interest on the cost of construction of the lamps so directed to be removed. If, then, there be any subsequent legislation impairing the obligation of the contract, it must arise from one or both of the provisions just referred to. Now, it is apparent that the command given by the city to the gas company to remove the unused gas lamp posts from the streets in no way even tended to impair the obligation, if any, resting on the city to pay interest on the cost of the construction of the lamp posts which were ordered to be removed, since in any event, if the contract imposed the obligation to make such payment, the duty of the city to do so was left absolutely unaffected by the order to remove. That is to say, if the duty to pay was created by the contract, such obligation remained wholly untouched by the order of removal. This being true, it results that the order to remove the unused lamp posts cannot be treated as an impairment of the obligations of the contract without saying that such

obligations were destroyed, although they were absolutely unaffected by the act which it is asserted brought about the impairment. And it will become at once manifest, from a consideration of the remaining provision of the ordinance, that the same result must follow. The other provision in question created no new right or imposed no new duty substantially antagonistic to the obligations of the contract, but simply expressed the purpose of the city not in the future to pay the interest on the cost of construction of the lamp posts which were ordered to be removed. That is to say, it was but a denial by the city of its obligation to pay, and a notice of its purpose to challenge in the future the existence of the duty to make such payment. This denial, while embodied in an ordinance, was no more efficacious than if it had been expressed in any other form, such as by way of answer filed on behalf of the city in a suit brought by the company against the city to enforce what it conceived to be its rights under the contract. When the substantial scope of this provision of the ordinance is thus clearly understood, it is seen that the contention here advanced of impairment of the obligations of the contract arising from this provision of the ordinance reduces itself at once to the proposition that wherever it is asserted on the one hand that a municipality is bound by a contract to perform a particular act and the municipality denies that it is liable under the contract to do so, thereby an impairment of the obligations of the contract arises in violation of the Constitution of the United States. But this amounts only to the contention that every case involving a controversy concerning a municipal contract is one of Federal cognizance, determinable ultimately in this court. Thus, to reduce the proposition to its ultimate conception is to demonstrate its error."

The disposition of the courts to construe franchises of a character similar to that under consideration in favor of the city and to hold that nothing passed by implication, and only such rights are con-

ferred as are contained in express language of the grant itself, is well illustrated in the case of *Stein* v. *Water Co.*, 141 U. S., 67. It is there held:

> "A contract with a municipal corporation whereby the corporation grants to the contractor the sole privilege of supplying the municipality with water from a distinct source for a term of years is not impaired, within the meaning of the contract clause of the constitution, by a grant to another party of a privilege to supply water from a different source.
>
> "Where a contract with a municipal corporation is susceptible of two meanings, one restricting and the other expanding the powers of the corporation, that construction is to be adopted which works the least harm to the state."

This court, after discussing the cases of *New Orleans Water Works Co.* v. *Rivers,* 115 U. S., 674, and *St. Tammany Water Works* v. *New Orleans Water Works*, 120 U. S., 64, said:

> "The present case is materially different. The exclusive right acquired by Stein under his contract of 1840 with the City of Mobile, and confirmed by the act of January 17th, 1841, of supplying that city and its people with water, by means of a system of public works, did not, in terms or by necessary implication, embrace all streams, or rivers, or bodies of water from which he could supply water for public use in Mobile. While the obtaining of water for that city was undoubtedly contemplated by the legislature, when it passed the first act, that of 1820, the thing done to that end was to incorporate three persons proposing to bring water to the city from Three-Mile creek. And this idea was apparent in the agreement of 1836 with Hitchcock. So, by the agreement with Stein, he and his heirs, administrators and assigns, acquired the sole privilege of supplying the City of Mobile with water from Three-Mile creek, for a designated term of years, as well as after the expiration of that

term, and until he or they should receive from the city the actual value of his water works, determined in the mode prescribed by the contract. The specific power and authority given to Stein and his executors, administrators and assigns, by the city and the state, was to conduct the water from any part of the Three-Mile creek, so-called, so that the same be good and wholesome. Why the parties, in making their agreement, specified a particular stream from which Stein was to conduct water to the City of Mobile, for public use, does not distinctly appear. And it is not necessary to inquire, for the question before us depends upon a fair and reasonable interpretation of the agreement actually made. The court has no right to enlarge it, even if we believe that the parties themselves would have done so if the matter had at the time the agreement was signed, been called to their attention. The exclusive privilege granted and the power and authority conferred, in connection therewith, were to conduct water into the city from Three-Mile creek. The parties, by the agreement, fixed upon that stream as a source of the water to be brought into the city, and the exclusive privilege granted to Stein had reference only to that stream.

"The case, then, is this, the state incorporated the Bienville Water Supply Co., and conferred upon it the exclusive right, for a term of years, to supply the Fort of Mobile with water conducted and brought from any other point than Three-Mile creek. The plaintiff seeks a perpetual injunction against the exercise of that right, and in support of his claim of an exclusive privilege of supplying water for Mobile and its people, from whatever source drawn, exhibits the contract which granted to Stein the exclusive right to supply that city and people with water brought from Three-Mile creek, for a fixed term of years, and until his works were redeemed by the city."

After stating the rule of interpretation of the granting of franchises, heretofore quoted, the court concludes as follows:

> "Guided by this rule, in respect to which there is no difference of opinion in the courts of this country, we are forbidden to hold that a grant, under legislative authority, of an exclusive privilege, for a term of years, of supplying a municipal corporation and its people with water drawn by means of a system of water works from a particular stream or river, prevents the state from granting to other persons the privilege of supplying, during the same period, the same corporation and people with water drawn in like manner from a different stream or river."

A similar ruling is made in *Charles River Bridge* v. *Warren Bridge*, 11 Peters, 536. There the following rule was announced:

> "The charter of a bridge corporation, not containing an express contract that the State would not authorize another bridge to be built to the injury of the corporation, held, that no such contract could be implied, and that a law empowering another corporation to erect and maintain a free bridge so near to the first as practically to deprive the first corporation of all tolls, was not a law impairing the obligation of any contract."

The court, after stating the rule that nothing is to be taken by intendment or implication, said:

> "Adopting the rule of construction above stated as the settled one, we proceed to apply it to the charter of 1785, to the proprietors of the Charles River Bridge. This act of incorporation is in usual form, and the privileges such as are commonly given to corporations of that kind. It confers on them the ordinary faculties of a corporation, for the purpose of building a bridge; and establishes certain rates of toll, which the company are authorized to take. This is the whole grant. There is no exclusive privilege given them over the waters of

Charles River, above or below their bridge. No right to erect another bridge themselves, nor to prevent other persons from erecting one. No engagement from the State that another shall not be erected; and no undertaking not to sanction competition, nor to make improvements that may dimish the amount of its income. Upon all these subjects the charter is silent; and nothing is said in it about a line of travel, so much insisted on in the argument, in which they are to have exclusive privileges. No words are used, from which an intention to grant any of these rights can be inferred. If the plaintiff is entitled to them, it must be implied, simply from the nature of the grant; and cannot be inferred from the words by which the grant is made. * * * But its income is destroyed by the Warren bridge, which, being free, draws off the passengers and property which would have gone over it, and renders their franchise of no value. This is the gist of the complaint. * * * The inquiry then is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be be found in that instrument? It must be admitted on all hands that there is none,—no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be by implication, and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the public, or given to the corporation, beyond those which the words of the charter, by their natural and proper construction purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied."

In *Hamilton Gaslight Co.* v. *Hamilton City*, 146 U. S., 258; the statute under consideration gave to the city council the power either to erect gas works or to purchase such works already erected. It was proposed there, as in the case at bar, to erect

gas works by the city, at the public expense, after a franchise had been granted to the private corporation, and it was maintained there, as here, that the obligation of the contract would be impaired. The court said:

> "And it may be that the erection and maintenance of gas works by the city at the public expense and in competition with the plaintiff will ultimately impair, if not destroy, the value of the plaintiff's works for the purposes for which they were established. But such considerations cannot control the determination of the legal rights of the parties. As said by this court, in *Curtis* v. *Whitney*, 13 Wall., 68–70: 'Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by state and national legislation.' If parties wish to guard against contingencies of that kind, they must do so by such clear and explicit language as will take their contracts out of the established rule, that public grants, susceptible of two constructions, must recieve the one most favorable to the public. Upon this ground it was held in *Stien* v. *Bienville Water Supply Co.*, 141 U. S., 67, 81, that 'we are forbidden to hold that a grant, under legislative authority, of an exclusive privilege, for a term of years, of supplying a municipal corporation and its people with water drawn by means of a system of waterworks from a particular stream or river, prevents the state from granting to other persons the privilege of supplying, during the same period, the same corporation and people with water drawn in like manner from a different stream or river.' What was said in *Turnpike Company* v. *The State*, 3 Wall., 210, 213, is quite applicable to the present case. The State of Maryland incorporated a company with power to construct a turnpike between Baltimore and Washington; and subsequently incorporated a railroad company, with authority to construct a railroad between the same cities, the line

of which ran near to and parallel with the turnpike. One of the questions in the case was, whether the last act impaired the obligation of the contract with the turnpike company, it appearing that the construction of the railroad had rendered it impracticable for the company, out of its diminished income, to maintain the turnpike in proper order. This court said: 'The difficulty of the argument in behalf of the turnpike company, and which lies at the foundation of the defense, is, that there is no contract in the charter of the turnpike company that prohibited the legislature from authorizing the construction of the rival railroad. No exclusive privileges had been conferred upon it, either in express terms, or by necessary implication; and hence whatever may have been the general injurious effects and consequences to the company from the construction and operation of the rival road, they are simply misfortunes which may excite our sympathies, but are not the subject of legal redress. So, it may be said, in the present case, neither in the statutes under which the plaintiff became a corporation, nor in any contract it had with the city, after January 1st, 1889, was there any provision that prevented the State from giving the city authority to erect and maintain gasworks at its own expense, or that prevented the city from executing the power granted by the section of the Code of 1869 to which we have referred."

The citation of authorities of a similar import might be multiplied but we do not think it would serve any useful purpose, and we content ourselves by referring to the following cases:

Thompson Electric Co. v. *City of Newton*, 42 Fed., 723;

Lewis v. *City*, 75 Fed., 884;

City of Brooklyn, 143 N. Y., 596;

City of Austin v. *Bartholamew*, 107 Fed., 349;

Newburyport Water Co. v. *Newburyport*, 103 Fed., 587.

III.

The power of the City of Joplin to erect and operate its own electric light plant and the power to grant to some person or corporation a franchise therefor are concurrent powers. The lower court erred in holding that the city in granting a franchise for the erection of an electric light plant thereby disabled itself from erecting and maintaining one of its own.

There were two statutory provisions in force governing cities of the third class, such as the City of Joplin, in respect of the construction of electric light works and the granting of franchises therefor at the time of the passage of ordinance No. 441, granting the franchise under which the complainant claims. An act entitled, "An act to amend Article 1, of Chapter 31, of the Revised Statutes, 1889, of Missouri, entitled, 'Cities and Towns, Miscellaneous Provisions and General Powers,' by adding a new section thereto, to be numbered 1946a," was approved March 27, 1891, contained an emergency clause putting the act into effect on that date. It is as follows:

> "SECTION 1. That Article 1, of Chapter 31, of the Revised Statutes, 1889, of Missouri, entitled 'Cities and Towns, Miscellaneous Provisions and General Powers,' be and the same is hereby amended by adding a new section thereto, to be known as section 1946a, as follows:
>
> "SECTION 1946a. The city council of any city, town or village in this state shall have the power to erect, maintain and operate water works, or to acquire waterworks by purchase, and to operate and maintain the same, and to supply the inhabitants thereof with water; to erect, maintain and operate gas plants, electric light plants, or any other kind of plant or device for lighting purposes, or to acquire and own the same by purchase,

and to maintain and operate such plants, and to supply the inhabitants of such cities, towns and villages with light therefrom.

"SEC. 2. The fact that many cities and towns in this state are now without the power to erect, maintain and operate plants for furnishing the water and light necessary to the health and safety of the inhabitants thereof, creates an emergency within the meaning of the constitution; therefore, this act shall take effect and be in force from and after its passage." (Laws of 1891, p. 67).

Another act governing cities of the third class, approved April 2d, 1891, containing an emergency clause putting the law into effect on that date is as follows, so far as this controversy is concerned (Laws 1891, p. 60):

"Section 1519. The council shall have the right to erect, maintain and operate gas works, electric light works or light works of any other kind or name, and to erect lamp posts, electric light poles or any other machinery or appliances necessary to light the streets, avenues, alleys and other public places, and to supply private lights for the use of the inhabitants of the city and its suburbs, and regulate the same, and to prescribe and regulate the rates to be paid by the consumers thereof, and to acquire, by purchase, donation or condemnation, suitable ground within or without the city upon which to erect such works, and the right of way to and from said works, and also the right of way for laying gas pipes, electric wires under or above ground, and erecting posts and poles and such other machinery and appliances as may be necessary for the efficient operation of such works; all of which shall be done in the manner prescribed by ordinance: *Provided*, that the council may, in their discretion, grant the right to any person or persons or corporation to erect such works and lay the pipes, wires, and erect the posts, poles and other necessary appliances and

machinery therefor, upon such terms as may be prescribed by ordinance: *Provided, further*, that such right to such persons or corporation shall not extend for a longer period than twenty years, and shall not be renewed unless by the consent of a majority of the qualified voters of said city voting at an election held for such purpose."

It was insisted in the court below by the complainant that the power granted in Section 1519 could only operate in the alternative; that is, that the city might erect electric light works of its own or it might grant a franchise to some corporation for the erection of an electric light plant and the supply of electric light to the city and its inhabitants, but that the operation of one power operated to exclude the other, and when the city elected, in 1891, to grant a franchise by ordinance No. 441, the city was thereby disabled from erecting its own electric light plant until the expiration of the twenty years, for which time the franchise was given. The position of complainant seems to be that the right of the city to erect its own works is held in abeyance or in nubibus so long as a franchise exists granting the right to some corporation, but that upon the expiration of the franchise, then the right revives in the city to erect and maintain its own plant.

The act above quoted, approved March 27, 1891, was in force at the time section 1519 above quoted was passed. By it the city council is given the power "to erect, maintain and operate gas plants, electric light plants or any other kind of a plant or device for lighting purposes, or to acquire or own the same by purchase, and to maintain and operate such plants and to supply the inhabitants of such

cities, towns and villages with light therefrom. "We think it must be conceded that that section gave to the City of Joplin, on March 27, 1891, full and express power to erect and operate its own electric light plant. There is certainly nothing in the language in the act approved, and effective six days later, of April 2nd, 1891, evidencing any intention to repeal this act. Both of them are consistent and harmonious. The act of April 2d, 1891, should be construed most favorably to the municipality and to its citizens. The obvious purpose of it was to grant to cities of the third class two methods by which a city and its citizens might be supplied with electric light, either by the erection of electric light plant by the city or by the grant of a franchise for that purpose to some corporation or by both. There are no words of exclusion in the act and it would be a strained construction to hold that the act approved April 2d, 1891, operated by force of its terms to repeal the act approved March 27th, 1891. We submit that under either act the city has full and plenary power for the construction of its own electric light plant, notwithstanding the franchise owned by the complainant.

A case almost identical with the case at bar is the case of *Skaneateles Water Works Company* v. *Skaneateles*, 22 Sup. Rep., 400.

In 1887, the Village of Skaneateles granted complainant in that case a franchise to supply the village with water. At the time of granting such franchise, the village under the laws of New York of 1873, had the right to grant such franchise, and under the act of 1875, had the right to construct works of its own.

It was contended by complainant in that case, as by complainant in the case at bar, that, "Where

with these two different methods for obtaining a supply of water, the village chose that which called for a supply by a private company, it impliedly contracted that it would not itself take the other method of obtaining such supply, unless it bought the plant of the company, or condemned it under the provisions of the act of 1875."

The court held, that the village could construct its own works without purchasing or condemning the plant of complainant company.

IV.

If the City of Joplin in granting complainant's franchise thereby disabled itself from erecting an electric light plant of its own, then the lower court was without jurisdiction and should have dismissed the bill.

As both complainant and defendant are residents of the same state, the jurisdiction of the Federal Court is invoked solely upon the ground that complainant's contract has been impaired by the municipal ordinances of the City of Joplin, providing for the issue of bonds and erection of electric light plant. If it be true, as claimed by the complainant, in the court below, that the City of Joplin has the right to erect its own electric light plant or to contract with some other person or corporation to erect one and that this power exists and can only be exercised in the alternative and that the city has exercised its alternative right by granting the franchise to the complainant, then it necessarily results that the jurisdiction of this court must fail. The ordinances providing for the erection of a city plant would not have been passed under any supposed legislative authority, and hence could not be regarded as law, within the meaning of the constitutional pro-

hibition of state laws impairing the obligation of contracts.

The exact question was passed upon in *Hamilton Gaslight Co.* v. *City of Hamilton*, 146 U. S., 258. In that case the statutes in the State of Ohio gave to theCity of Hamilton, as in the case at bar, the power to erect a gas plant or to contract for the erection of a gas plant and the lighting of its streets and public places. In passing upon that phase of the case, this court said:

> "The plaintiff's first contention is that there is no statute of Ohio authorizing any city in which there are already gas works in full and complete operation to erect gas works or to levy a tax for that purpose. If this were conceded, we should feel obliged—the plaintiff and defendant being both corporations of Ohio—to reverse the judgment and remand the cause, with directions to dismiss the suit for want of jurisdiction in the Circuit court. The jurisdiction of that court can be sustained only upon the theory that the suit is one authorized under the Constitution of the United States. But the suit would not be of that character, if regarded as one in which the plaintiff really sought protection against the violation of the alleged contract by an ordinance to which the State has not in any form given or attempted to give the force of law. A municipal ordinance, not passed under supposed legislative authority, cannot be regarded as a law of the State within the meaning of the constitutional prohibition against State laws impairing the obligation of contracts. *Murray* v. *Charleston*, 96 U. S., 432; *Williams* v. *Bruffy* 96 U. S., 176; *Lehigh Water Co* v. *Gaston*, 121 U. S., 388; *New Orleans Water Works Co.* v. *Louisiana Sugar Refining Co.*, 125 U. S., 18. A suit to prevent the enforcement of such an ordinance would not therefore be one arising under the Constitution of the United States. We sustain the jurisdiction of the Circuit Court, because it appears that the defendant grounded its right to enact the ordinance in question and to

maintain and erect gas works of its own upon that section of the municipal Code of Ohio adopted in 1869, providing that the city council of any city or village should have power whenever it was deemed expedient and for the public good, to erect gas works at the expense of the corporation or to purchase gas works already erected therein; which section, as plaintiff contends, if construed as conferring the authority claimed, impaired the obligation of its contract previously made with the state and city."

The court then quotes from the case of *State* v. *Hamilton,* 47 Ohio St., 52, where it is said:

"Section 2486, in plain language, gives the power to the council either to erect gas works or to purchase such works already erected. The authority granted is not coupled with any conditions or contingency, but is to be exercised when the council may deem it expedient and for the public good. The language is free from ambiguity. The discretionary power would hardly seem consistent with the limitations sought to be imposed, that the council can build gas works only where there are no gas works in the municipality or where gas companies already organized refuse or neglect to comply with the requirements of the law as to lighting or laying pipes or neglect to furnish gas to citizens. The interest of the city may demand that a gas company established and doing business, although complying with all statutes and ordinances, should not continue to enjoy exclusive possession of the field of operation."

In conclusion we respectfully suggest: that the claims of complainant, viewed in the light of the testimony, are not nearly so favorable as the claims of the complainants in the cases above cited whose prayers for injunctive relief were denied.

Indeed, complainant's bill itself fails to allege a substantial compliance on its part with the provisions of ordinance 441, after complainant became the

assignee of that ordinance. The bill does allege such compliance by the company which preceded it, to-wit: the Merchants Electric Light & Motor Company, but it nowhere alleges such compliance by complainant. The bill does allege that complainant, at all times since it acquired ordinance No. 441, has operated under it, and furnished lights under it, but it does not allege a compliance with its terms since it acquired it on June 9th, 1896.

Following this failure of complainant to allege any substantial compliance with the provisions of ordinance 441, comes the proof that complainant has repudiated that ordinance and refused to be bound by it.

Instead of maintaining a plant within the city as required by ordinance 441. complainant's plant for generating electricity is located out of the city, at Grand Falls, several miles from the City of Joplin, and in another county. Instead of having its plant located in the city, subject to be taxed by the municipal authorities, as was clearly contemplated by the parties when the franchise was granted, its plant is taxed by, and such taxes are used to build up a competing and rival community.

Even if complainant could extend the contract by implication so as to have the benefit of provisions not written therein, a thing not possible under the decisions of this court, still, good faith would require on the part of complainant, a compliance with such things as are plainly written therein.

Is it not reasonable to suppose that in every instance where cities intended to be bound by contracts not to engage in a certain business, they have done so in express terms? Is it not unreasonable to suppose that any grantee of a franchise would con-

sent to leave to implication a contract that the city would not engage in a like business during the life of a franchise, or for a period of years short of that time, when there was a mutual agreement not to do so.

Does not complainant then ask the enforcement of an assumed contract not expressed in the franchise, not contemplated by the parties, when the franchise was granted, upon which the minds of the parties did not meet, and which would have been guarded against had it been supposed that any such contract would be claimed?

Would not such an implied contract be at variance with the general law governing the construction of contracts? With the doctrine that public grants susceptible of two constructions, must receive the one most favorable to the public, that nothing is taken by implication, and are not the contentions of complainant at variance with all the decisions of this court?

The decree of the court below should be reversed, and complainant's bill dismissed.

Respectfully submitted,

C. H. MONTGOMERY,
SAMUEL W. MOORE,
Solicitors for Appellant.

—— IN THE ——

Supreme Court of the United States,

OCTOBER TERM, 1903.

CITY OF JOPLIN, Appellant,
vs.
SOUTHWEST MISSOURI LIGHT COMPANY, Respondent.

No. 32.

Reply of Appellant.

An examination of respondent's brief, discloses a number of errors in the statement of evidence, and what the evidence establishes. These errors might be taken for facts if they are permitted to pass unchallenged. We desire also in this reply to question

the soundness of some of the legal propositions to be found therein.

No Implied Contract Necessary.

Respondent contends that inasmuch as the ordinance contained no contract prohibiting the city from engaging in commercial lighting, such a contract should be written into the ordinance by implication.

Appellant contends, that no implied contract is necessary or even permitted, because the contract is complete, unambiguous. and makes express provision for everything contemplated by the contracting parties.

The grant in the ordinance authorizes respondent's assignee, subject to certain limitations, to erect a plant within the city and its additions, to generate electricity, and to vend such electricity there generated, within such city and its additions, and it is not claimed that any one is interfering with or threatening to interfere with this privilege.

Respondent is not only in the enjoyment of everything granted, but more for it is vending electricity in appellant city, and its additions, generated at a plant located at Grand Falls, miles beyond the appellant city, and its additions, and beyond even the County in which appellant city in located.

No Provision In Ordinance 441 for Street Lights.

No provision was made in Ordinance No. 441 or elsewhere for street lights for the city during the life of the franchise. If Ordinance

441 had made provision for all such lights which the city might need during that period, then a clause that the city would not during that time erect its own plant would not have been unreasonable. But for the city without such arrangement to have contracted not to build its own plant without satisfactory arrangements to obtain such lights from private sources would certainly have been very unbusiness like. It may be urged that no objection is made to the city operating its plant to light its own streets. Our answer to this is, that it is not a business proposition to operate water works for hydrant rental alone, neither is it a business proposition,to operate an electric light plant, for street lights alone. It is a matter of common knowledge that it is necessary to lay many miles of mains and erect many miles of wire and keep them in repair to reach and supply the hydrants and street lights. The same wires that supply the street lights, would also supply stores, factories and other business enterprises with arc lights located on the lines of wire between such street lights and many more lights could be supplied with the same wires and poles and repairs by doing commercial lighting, than if the plant was confined to street lighting alone. Neither private individuals nor private corporations build plants to supply fire hydrants and street lights alone, and it is not a business proposition for a city to erect such a plant for street lighting alone. If respondent's assignors had asked for a clause in the ordinance prohibiting appellant city from doing anything but street lighting when the ordinance was under consideration, it would certainly have been refused, and if insisted upon, the franchise would not have been granted.

Certainly then, it would be unjust at this time to write such a contract into the ordinance by implication, when the city has no power to refuse the franchise by reason of it.

Appellant Required to Furnish No Lights To The Citizens of Appellant City.

It would also be unjust to bind the city by such implied agreement because the ordinance relied on is not mutual; it requires respondent to furnishes no lights to the citizens of appellant city. True the ordinance fixes the maximum charge for commercial lights, but it does not require any to be furnished, and provides for no forfeiture in case they are not furnished.

If respondent should be finally successful in this proceeding, it would be within its power to refuse to adequately supply the demand for commercial lighting within appellant city, and at the same time have rendered the city powerless to supply such demand. The provisions in the ordinance for the removal of poles, masts and towers not used, does not answer the difficulty. The respondent might use the poles, masts and towers to furnish heat or power or both, and furnish no lights at all until such time as appellant city would comply with any terms respondent might dictate even to an extension of franchise. Such a condition would be extremely burdensome, because electric lights are no longer considered luxuries they are considered at this time as necessary as sidewalks and sewers. The city might induce some other company to erect works but

for the fact that it is difficult to induce capital to enter a field already occupied.

Nearly all, if not all the cases where the courts have sustained express contracts prohibiting cities from entering the commercial field in competition with water and lighting companies, the ordinances have contained provisions requiring the furnishing of everything needed during the time the city was so excluded.

The case of Walla Walla vs. Walla Walla Water Company, 172 U S 1, (hereafter called the Walla Walla Case) much relied on by respondent, contains such a provision, and also a provision for forfeiture if the company failed to comply with it; but as already seen the ordinance relied on in this case, Ordinance No. 441, requires the furnishing of no lights either to the city or its citizens. Then is it reasonable to contend that the parties intended that the City should do such an unreasonable thing as to render the city powerless to supply lights to the citizens without at the same time making adequate arrangements for such supply from some other source?

Without Such An Agreement Ordinance 441 Would Create a Monopoly.

If it had been intended to prohibit the city from supplying lights, to its citizens, would not some provision have been made, in the ordinance empowering the city to buy the works of the respondent during the franchise? In the Walla Walla case, (supra), upon which respondent seems to place much reliance, the ordinance contained such a provision. Mr. Justice Brown speaking for the court at page 17, (par. 6) said:

"Nor do we think the contract objectionable in its stipulation that the city would not erect waterworks of its own during the life of the contract. There was no attempt made to create a monopoly by granting an exclusive right to this company, and the agreement that the city would not erect waterworks of its own was accompanied, in section 8 of the contract, with a reservation of a right to take, condemn, and pay for the waterworks of the company at any time during the existence of the contract."

If no monopoly would be created when a right to buy or condemn was reserved in the ordinance, would not the converse of this proposition logically follow; that without such right to condemn or buy reserved in the ordinance a monopoly would be created that is conceding respondent's contention to be correct? We have been able to find no law authorizing a city of the third class such as Joplin is, to condemn the plant and property of a light company and we are satisfied that no such law exists.

A Perpetual Franchise or Monopoly Must be Expressly Granted, Cannot be Implied.

Respondent's solicitors on page 6 of their brief cite the case of Detroit Citizens St. R. R. Co. vs. Detroit R. Co. 171 U. S. 48. This decision in our judgment not only does not sustain respondent's position, but is if applicable at all an authority against it. The only question before the court which seems applicable at all, was whether a perpetual franchise could be inferred from other powers or must be ex-

pressly granted. The court held that they must have for their support explicit permission. That it is not enough that the authority is convenient to them, but it must be indispensable to them.

Respondent's solicitors also cite (p. 6) in support of their contention of an implied contract, the case of Los Angeles vs. Los Angeles City Water Company, 177 U. S. 558. Why this case is cited we are at a loss to understand, for the court held at page 570-1, that inasmuch as there was an express contract it was not necessary to decide if there was an implied one, but stated the rule: That the power if not expressly given will not be presumed unless necessarily or fairly implied in, or incident to the other powers expressly given—not simply convenient, but indispensable to them.

A City Cannot be Bound by an Implied Contract where It can Only Act by Ordinance.

Respondent's solicitors (p 6) cite Dillon on Municipal corporations 4 Ed. Par. 459, as follows:

> "The present state of the authorities clearly justifies the opinion of Chancellor Kent, that corporations may be bound by implied contracts within the scope of their powers, to be adduced by inference from authorized corporate acts without either a vote or deed of writing."

If counsel had read the whole section and the one following, they would have discovered that the doctrine enunciated by the section taken as a whole is very different from that conveyed by the first part

of the paragraph. The portion of the paragraph following the portion quoted continues as follows:

> "This doctrine is equally applicable to public and private corporations, but in applying it however, care must be taken not to violate other principles of law. Thus it is obvious that an implied promise cannot be raised against a corporation when by its charter it can only contract in a prescribed way, except it be a promise for money received, or property appropriated under the contract."

Counsel for respondent do not contend that the council had any authority to grant its assignors any rights except by authority of the Acts of 1891, p. 60, quoted on page 3 of respondent's brief. By this law the council was only authorized to act by ordinance.

If appellant then could only contract in such matters by ordinance; and if it can be bound by an implied contract only for money received or property appropriated under the contract as is clearly laid down by Par. sec, 459 and 460; and as the implied contract contended for is neither for money received, or property appropriated under the contract, it follows very clearly, that such an implied contract cannot be invoked against appellant in this case.

A Case Not in Point.

Respondent's solicitors in their brief, (p 7) cite the case of Union Depot Co. vs. The Chicago K. & N. Ry. Co. 113 Mo. 213. In this case seven railroads each agreed to pay one-seventh of the operating expenses, and one-seventh of the interest on the cost of a union

depot, rentals from other roads to be credited on the rentals of the contracting roads. Some of the contracting roads extended through Kansas City, and others terminated there. The business of some of the roads transacted at the depot was much greater than the others. The court held construing the contract: That it was not the intention of the parties that a road purchasing another road and thereby extending it through Kansas City, should by reason of such purchase pay an additional rental. We fail to see how this case has any application to the case at bar

The Walla Walla Case Very Unlike the Case at Bar In Its Facts, Is so Far as It Is Applicable It Is Against the Contention of Respondent.

Respondent seems to place much reliance on the Walla Walla Case 172 U. S. 1. This case is so unlike the case at bar in its facts, that respondent cannot reasonably claim that it sustains its position, but on the contrary, the reasoning of the decision in respect to a monopoly is directly against that position. The Walla Walla case differs from the case at bar, in the following particulars:

1. The city of Walla Walla, expressly contracted not to build its own plant nor to engage in the business of furnishing water to itself or its citizens during the period of the franchise. The City of Joplin made no contract of this kind.

2 The town of Walla Walla, in the ordinance granting the franchise, expressly reserved unto the city the right to take, condemn and pay for the water-

works of the company at any time during the life of the franchise thereby preventing the creation of a monopoly. The ordinance in the case at bar, contains no such provision, and as the law gives the appellant city no such right, the ordinance, if defendant's position is correct, creates a most pernicious monopoly during the entire period of the franchise.

3. The ordinance in the Walla Walla case, makes most adequate provision for the entire supply of the city, and its citizens, and provides a forfeiture for their enforcement. The ordinance in the case at bar makes no provision for any electric lights either for the city or its citizens, during the period of the franchise, and no forfeiture to enforce any such provision. The only provision in the ordinance that even hints at such a thing, is the clause giving the grantees permission to place poles in the streets to properly suspend street lights, if the city should contract for such lights. This clause however, is only a provision regulating the erecting of poles, if a contract should be made with the city for street lights. It takes two parties to make a contract and the grantees, by refusing to make such contract, could defeat the clause authorizing them to set poles in the street.

4. In the Walla case the water company had expended $125,000 in building its plant, and laying its mains, which remained in the city to be taxed, whilst in the case at bar, the original grantees expended about $15,000, in building a plant in the city of Joplin, as required by Ordinance 441, but as soon as respondent became the assignee, it dismantled the plant and tore down the pole line, and moved all the machinery away from the city, and never since said time has it

ever maintained a plant for the purpose of generating electricity either in appellant city or its suburbs.

J. W. Freeman, witness for respondent, R. p. 154-7, testified in substance as follows:

> "That he was president of the Merchant's Light and Power Company, and obtained the franchise No. 441. That his company built the plant to generate electricity to supply the city of Joplin with electric lights, under that ordinance; and complied with all the provisions of that ordinance up to the time that they sold out in 1896 to the Southwest Mo. L. C. That before his company sold out it did commercial lighting but had no contract for public lighting. That after his company sold out to the S. W. Mo. Lt. Co., that company dismantled the plant built under Ordinance 441, and moved all the machinery away from Joplin, also tore down the pole line built under Ordinance No. 441, and transfered the wires to the pole line owned by the respondent company before the sale, and that since 1896 the Southwest Mo. Light Co. has maintained no plant within the city of Joplin to generate electricity to supply the city of Joplin with electric lights.

5. In the Walla Walla Case the company had never expressly repudiated the franchise upon which they based their suit, but at all times recognized it and claimed to be acting under it. Whilst in the case at bar, the respondent before it acquired ordinance number 441, was operating under ordinance number 98, (The Sergeant franchise) introduced in evidence by respondent (R. P. 129 and 130)

The Sergeant franchise was a better franchise for respondent, than Ordinance 441, because it was perpetual as to time, it permitted a higher charge for lights, it required the building or maintaining of no generating plant in the city, it required the maintenance of no free light, and it was in every particular more liberal to respondent than the franchise granted by Ordinance 441. For these reasons respondent after it became the assignee of Ordinance 441, not for the purpose of operating under it, because it had a better franchise as it thought, but to prevent competition, expressly repudiated Ordinance 441, and expressly refused to act under it or be bound by it, and never at any time recognized it until it made it the basis of this suit. The testimony upon this proposition is substantially as follows:

GEORGE T. BAYNE, (R. p's. 182 to 192.) testified that he was superintendent of respondent from July 1st, 1896 to June 30th, 1898. (Two years after respondent became the assignee of Ordinance 441,) and was succeeded by White as superintendent. That respondent had a better franchise, than the one granted by Ordinance 441, the Sergeant franchise, that it was much better for the company than Ordinance 441. that he never thought they would need the franchise granted by Ordinance 441, and for this reason he refused to be bound by it. That the officers of the city asked him to maintain the free light required by Ordinance 441, but as the Sergeant franchise did not require any light maintained free of charge, he refused to maintain it.

RECORD OF THE CITY of date Sept. 3, 1896 was introduced (R. p. 167) instructing the committee on fire, water and gas to confer with the Southwest Missouri Light Company and ascertain whether they would maintain a light as had the Merchants Electric Light Company in the past without charge to the city.

J. W. MOORE, (R. p. 193) testified substantially, as follows:

"That as chairman of the committee on fire, water and gas, he had seen Bayne, superintendent of the Light Co. and was informed by Mr. Bayne that the company did not feel themselves under obligations to maintain a light there, and that he so reported to the council on Sept. 16th, 1896. On cross-examination Moore testified. At the time he had this talk the light hung in the street. That the light had formerly been on Freeman's porch, that the way it came to be hung in the street. Freeman proposed if the City would furnish the poles, he would maintain a light in the Street."

(NOTE—Freeman was president and owned a large majority of the stock of the company that assigned Ordinance No. 441 to the Respondent) (see record p. 39.)

J. W. FREEMAN testified (R. p. 161)

"That this light has been on the front porch of his foundry, but some of the councilmen did not want a public light on private property, so his company agreed to maintain an arc light in the street if the city would furnish the poles. The

City furnished the poles, and the company moved the light into the street.

E. C. H Squire, on behalf of defendant, testified as follows: (R. p. 167)

"Q. Now turn to record 'D.' page 346, and read that part of date July 30th, 1897, relating to the establishing of a light at Fourteenth and Main streets. A. Mason presented the petition as follows: 'Joplin, Missouri, July 16, 1897—To the Honorable Mayor and Council of the City of Joplin, Missouri: We, the undersigned citizens and taxpayers of the City of Joplin, Missouri, respectfully petition your honorable body to have an arc light placed at the corner of Fourteenth and Main streets. The railroad crossing at this place creates a strong necessity for a light Signed, A. Knoche, G. W. Burgess, Philip Myers and seventy-seven others.'

"Q Now book 'D.' page 357, July 30, 1897. A. On motion of Lowry the petition for an arc light at Fourteenth and Main streets was referred to the committee on fire, water and gas with the power to act.

"Q. Turn to record 'D.' page 364 and read anything there referring to the electric light on Fourteenth and Main streets? A Moore, for the committee on fire, water and gas reported that they had ordered an arc light put up at Fourteenth and Main streets.

"Q. Are you familiar with the locality of Fourteenth and Main streets? A. Yes sir, tolerably so. (R. p. 168)

"Q. Is that the point referred to in Ordinance 441 requiring a light to be maintained on the front of Freeman's foundry? A. Freeman's foundry fronts right there on Fourteenth and Main streets, the front of the building would be at that point.

"Q. The front porch of Freeman's foundry is how far from the intersection of Fourteenth and Main streets. Is it at the northwest corner of Fourteenth and Main? A. It is the northwest corner of the intersection.

"Q. Then how does the railroad cross there? A. It crosses Main street north of the intersection of Fourteenth.

"Q. About how far? A. About twenty feet I should judge.

"Q. Then a light put up at the corner of Fourteenth and Main streets would light the crossing? A. Yes, sir.

"Q. Since you have been clerk has any light been maintained on the front porch of Freeman's foundry to light the Frisco crossing, or has any light been maintained near there by the Southwest Missouri Light Company free of charge so far as you know? A. So far as I know there has not. I am not very familiar with that part of town. That is, I don't go down there much. I think the city paid for the light at Fourteenth and Main since it was established. There was an increase of one light at that time that the city paid for. I am quite sure that was the light. I

don't know of any other light being ordered in." (R. P. 171).

Respondent offered no proof on this subject. George Myers, former general manager and witness for respondent stated on cross examination that he thought his company maintained the light free of charge as required by the ordinance, (R. p 81, 82) but at bottom of page 82, and top of page 83, admitted that he knew nothing about the matter.

A. Knoche testified substantially, as follows: (R. p. 199 200).

"That before Freeman sold out there was a light maintained on the front porch of his foundry to light the Frisco crossing. That it was kept burning for a time after the sale, and then for a year there was no light there. That he thought they were entitled to a light there, and went to Freeman and asked him about it and Freeman said he had nothing to do with it.

"That after the light was out nine or ten months he got up a petition to the council to establish a light there, and the city established one there within two weeks after he got up the petition. Witness also testified (bottom of page 200) that before Freeman sold out he made an arrangement with the city for the city to furnish the poles and Freeman would maintain an arc light in the street, that the light he had maintained on the porch was an incandescent light with a reflector, and that there was no room on the porch for an arc light. Witness said he thought there is a light on Freeman's porch yet, but he said this light

would not do the street any good, naturally Mr. Freeman would have hung lights around the front of his foundry, but a private light on the front of his foundry would not relieve the respondent of its duty to light the street crossing. There is no evidence that Freeman ever objected to respondent maintaining a light on the front of his foundry. Respondent did not object because the lamp was over the street. It refused to maintain the light because it was not operating under Ordinance 441, but under the Sargeant Franchise.

Thus it will be seen by the above testimony that the Merchant's or Freeman company maintained the light in compliance with ordinance until an arrangement was made to take it from the porch and put it over the street. That this light was maintained up to the sale, that after the sale the respondent not only refused to maintain the light either on the porch or in the street, but repudiated the ordinance itself, and has never maintained any light at either place since.

Mr. Knoche said (R. p. 201) that he thought there was a light on the porch at the time he testified, but neither this witness or any other witness testified that respondent ever maintained it or offered to maintain any such light at any place, either in the streets or on the porch.

Respondent's council in their brief seem to rely most upon that part of the opinion in the Walla Walla case, which states; that an agreement by the city not to build its own plant and compete with the water

company was but a natural incident to the main purpose of the contract.

This attempt to apply the reasoning of the Walla Walla case to the case at bar illustrates the unfairness of attempting to make such application where the two cases are so dissimilar in their facts. In the Walla Walla case, the ordinance provided that the company should furnish, and the city should take from it all the water the city would need for all purposes during the life of the franchise.

This was one method of contracting that the city would not obtain such supply from any other source.

If a state should contract to sell a certain piece of land to A., a subsequent contract to sell the same land to B, would be just as much an impairment of the first contract, as if it had contained a clause that the state would not sell it to B. The contract to sell the land to A., was a contract not only not to sell it to B., but also, not to sell it to any other person. After the city of Walla Walla had agreed to take its entire supply for a specified time from the water company, an agreement not to build its own plant, added nothing to the contract already made.

If a laborer should contract his whole time for a month to A., he thereby contracts not to labor for another during that time.

If an actor should agree to act at a certain theatre for a given time, he thereby contracts not to act at another theatre during the same time.

It is hardly necessary to invoke the doctrine applicable to implied contracts to these cases, because

they are really express contracts. The words of a contract are only used to express the intentions of the parties, and this may be done as well by agreeing to take one's whole supply of an article, from A., as by agreeing not to obtain such supply from any other person. Inasmuch as the city in the case at bar agreed to take no lights from the respondent, and the respondent made no contract binding it to furnish any, the above reasoning can have no possible application to this case.

Estoppel Cannot Be Invoked Against Appellant.

On pages 10 and 11 of respondent's brief the doctrine of estoppel is claimed against appellant city. It is contended that for a period of ten years after the passage of Ordinance 441, the city maintained contract relations with the original grantors, and with respondent as its successor; and that it continually acquiesced in the relations between the light company and its citizens, and acquiesced in the expenditure of large sum of money in the enlargement of its plant to meet the growing needs of the city.

An examination of the evidence will determine if this claim has any foundation in fact.

> J. W. Freeman witness for respondent testified (R. p. 154,) that before his company sold out to respondent, his company never had any contract with the city to light its streets.

This disposes of any contract relation before the sale. After the sale, the only contract made with re-

spondent was a temporary contract for four months to furnish street lights while the city light plant was being constructed, (See R p. 37). Before this contract was made the city had been notified as shown above that respondent was not operating under Ordinance No. 441, but under the Sargeant franchise which is not made the basis of this action, so that it could not be said that even this temporary contract was made under ordinance 441.

The contract previous to this (R p. 34) was a contract entered into between the city of Joplin and another company, not respondent, the Southwest Electric Light and Water Power Company, the company that sold out to respondent. It operated under the Sergeant franchise and had its plant at Grand Falls. The contract was dated Feb. 21, 1894, to furnish street lights to the City of Joplin, from May 1st, 1894, to May 1st, 1899.

Now as to expenditure of money. All the money expended at Grand Falls before respondent purchased the franchise granted by Ordinance No. 441, such as building a dam, a generating plant and an auxiliary steam plant, was spent under the Sergeant franchise and not under Ordinance 441 at all, it was spent miles away from the City of Joplin and in another county. This company had a pole line built under the Sergeant franchise and as soon as it acquired the franchise granted under Ordinance No. 441, respondent dismantled and tore down the plant and pole line built under Ordinance 441, so that nothing remains of any plant or pole line built under Ordinance 441. All that has been expended by respondent since it acquired Ordinance 441, has been expended by it on

its plant and pole line built under another franchise entirely. Again. All moneys expended in the city in such additions after respondent acquired Ordinance 441, were expended after notice to the city that respondent was not operating under Ordinance 441, but under the Sergeant franchise, and the city never has any other notice until this ordinance was made the basis of this suit. Then how could appellant city be said to acquiesce in the expenditure of money under Ordinance 441 when the only notice it had was that respondent was not acting under that ordinance.

As to moneys expended in improving respondent's plant at Grand Falls, after respondent purchased, the franchise granted by Ordinance No. 441, it was expended after notice to appellant that respondent was operating under the Sergeant franchise which did not require any generating plant to be built or maintained within the city of Joplin. And further; this generating plant was located out of the city of Joplin and was improved for the purpose of furnishing lights to Webb City and Carterville under franchises obtained from those cities.

George M. Myers, former superintendent and witness for respondent testified as follows: (R p. 51)

"Q. Where is the machinery or power plant of the company located with reference to the city of Joplin? A. The power machinery is located at what is called Grand Falls in Newton County.

"Q. How far, and in what direction from the city of Joplin? A. It is about four and three

quarter miles—I think it is about southwest as near as I can remember.

* * * * * * * *

"Q. Did the property of the company extend beyond the city of Joplin to other cities? A. Yes sir.

"Q. To what other cities? A. To Webb City and Carterville.

"Q. How was that connection made, by poles and wires strung on poles. A. Yes sir.

"Q. Did the company have any property or appliances for furnishing light in the two last named cities of Webb City and Carterville? A. Yes sir.

The same witness testified on cross examination (R. p. 73) That Carterville is an independent city by itself situated about six miles from Joplin, and Webb City is an independent city by itself situate about six miles from Joplin, that each corporation is independent and separate from each other and that the property the company had in those cities were operated under rights respondent had obtained from those cities, operated under franchises owned in those cities, and that the doing of commercial lighting in the city of Joplin, would not interfere with respondent's properties or light service in either of those cities; that part of the machinery of respondent at Grand Falls was for the purpose of supplying Webb City and Carterville, and that the pole line of respondent for supplying Webb City and Carterville

runs from Grand Falls to Carterville through the city of Joplin. (R. p. 76) The city of Joplin is in Jasper County, and Grand Falls is in Newton County.

Now as to the claim that appellant acquiesced in respondent and its assignor furnishing commercial lights to the citizens of Joplin.

Before the sale to respondent, of Ordinance 441, the grantee company maintained its generating plant in the city of Joplin, maintained the light free of charge, and complied with all the provisions of Ordinance 441, so that up to that time there was no acquiescence in any failure to comply with such ordinance. As we have already seen, respondent immediately after it became the assignee of that franchise, notified appellant that it was not acting under, and would not be bound by that ordinance. How then can it be claimed that the appellant city acquiesced in respondent's failure to comply with the provisions of that ordinance whilst furnishing lights to its citizens? Respondent owned the Sergeant franchise, it required the maintenance of no free light, it required the building and maintaining of no generating plant in the city of Joplin, appellant could not dictate that respondent should operate under any particular franchise. Respondent owned both franchises, and it could operate under either one or both at its option. Respondent elected to repudiate Ordinance No 441, and operate under the Sergeant franchise. Appellant city protested against such action, but its protests were of no avail.

Again, how can appellant be estopped by reason of doing or not doing any act with reference to the

building of an electric light plant, constructed in another county, to supply two independent cities?

But outside of all this the city did no act, and made no contract inconsistent with any subsequent act of appellant. Appellant did nothing to induce respondent to change its position.

The doctrine of estoppel does apply in this case, but it applies against respondent, not against appellant.

Respondent cannot repudiate all the obligations of Ordinance 441, give notice that it is not acting under it and will not be bound by it, for years, and then when it is thought that it furnishes a better basis for an injunction suit, than does the Sergeant franchise, elect for the first time to avail itself of its provisions.

It may be urged that Superintendents Bayne and White, were not authorized to repudiate Ordinance 441. (Fillmore witness for respondent testified R. p. 146, that superintendent White would not admit that respondent was operating under the franchise granted by Ordinance 441, called the Merchant's franchise.) If such want of authority can be urged as an excuse, any corporation can by its superintendents, its active managers, repudiate any contract for years, and then prevent an estoppel by asserting that such superintendents were acting without authority. In this case, however, after appellant's answer was filed, (R. p. 18) alleging respondent's failure to maintain the light free of charge as required by Ordinance 441, respondent made no offer to comply with said ordinance, or maintain said light.

George M. Myers, witness for respondent (R. p. 81) testified:

> "A. I don't think they are maintaining it now. They are not maintaining any lights down there now for the city.

City Could Not Regulate Rates to be Charged By Lighting Company.

Counsel for respondent in their brief (P. 4) says;

> "The ordinance fixed the maximum price of lights, and specified the kinds, the statute provides that the city may prescribe and regulate the rates to be paid by the consumers."

This statement is certainly missleading. In the connection used it conveys the idea that the appellant city had the right to regulate the rates, to be paid by consumers to the respondent company. The paragraph quoted seems to have been taken from the statute set out on page three of their brief. This statute refers to lights furnished by the city and has no reference to lights furnished by a private company. The writers have made a thorough search up to the time respondent filed its brief, and have been unable to find any provision in the charter of cities of the third class, or in the general law, authorizing the appellant city to regulate the rates to be charged by lighting companies.

Ordinance 441 Was Passed to Obtain Competition and To Obtain Lights Generated at a Plant Located in the City.

Respondent has no right to object to competition whilst claiming to operate under Ordinance 441, because that was one of the main purposes of the passage of that ordinance.

One of the prominent cannons of construction in determining the meaning of contracts and legislative enactments is to consider all the surroundings of the parties, and the object to be attained by the making of the contract, or the passage of the law.

At the time Ordinance 441 was passed, a gas company was engaged in furnishing commerical gas lights in the city of Joplin, and had been for some twenty years before that time. The Sergeant franchise had been passed years before, and the company which preceded respondent was at that very time and had been for years furnishing electric street lights and commercial electric lights in the city of Joplin. An electric light franchise had been granted to the gas company, but it had not done much under it. The lights furnished by the predecessor of respondent with its plant at Grand Falls, were not satisfactory, and instead of getting better, the lights got worse. (R. p. 142, 143, also see evidence of Squire, McDonald, Moore, and Knoche.)

This was the condition of affairs when a company of merchants and business men applied for and obtained the franchise granted by Ordinance 441. The

partnership adopted the name of Merchant's Electric Light and Motor Company, and afterwards incorporated under the same name. The purpose and object of Ordinance 441, was not to furnish electric lights inthe city of Joplin, the city already had such lights, but to organize a light company which would compete with the company then operating at Grand Falls, the predecessor of respondent, and, to obtain lights from a plant located in the city. This was the evident purpose of the city in granting the franchise and the grantees in obtaining it, as evidenced by the franchise itself, as it only grants permission to vend electric lights which are generated in the city and required the building and completion of such plant in the city.

Ordinance 441 relied on in this case in these particulars is very unlike the ordinance relied on in the Walla case. Ordinance 441 was passed to obtain competition, the ordinance in the Walla Walla case was passed to obtain a supply of water and contained an express contract against all competition.

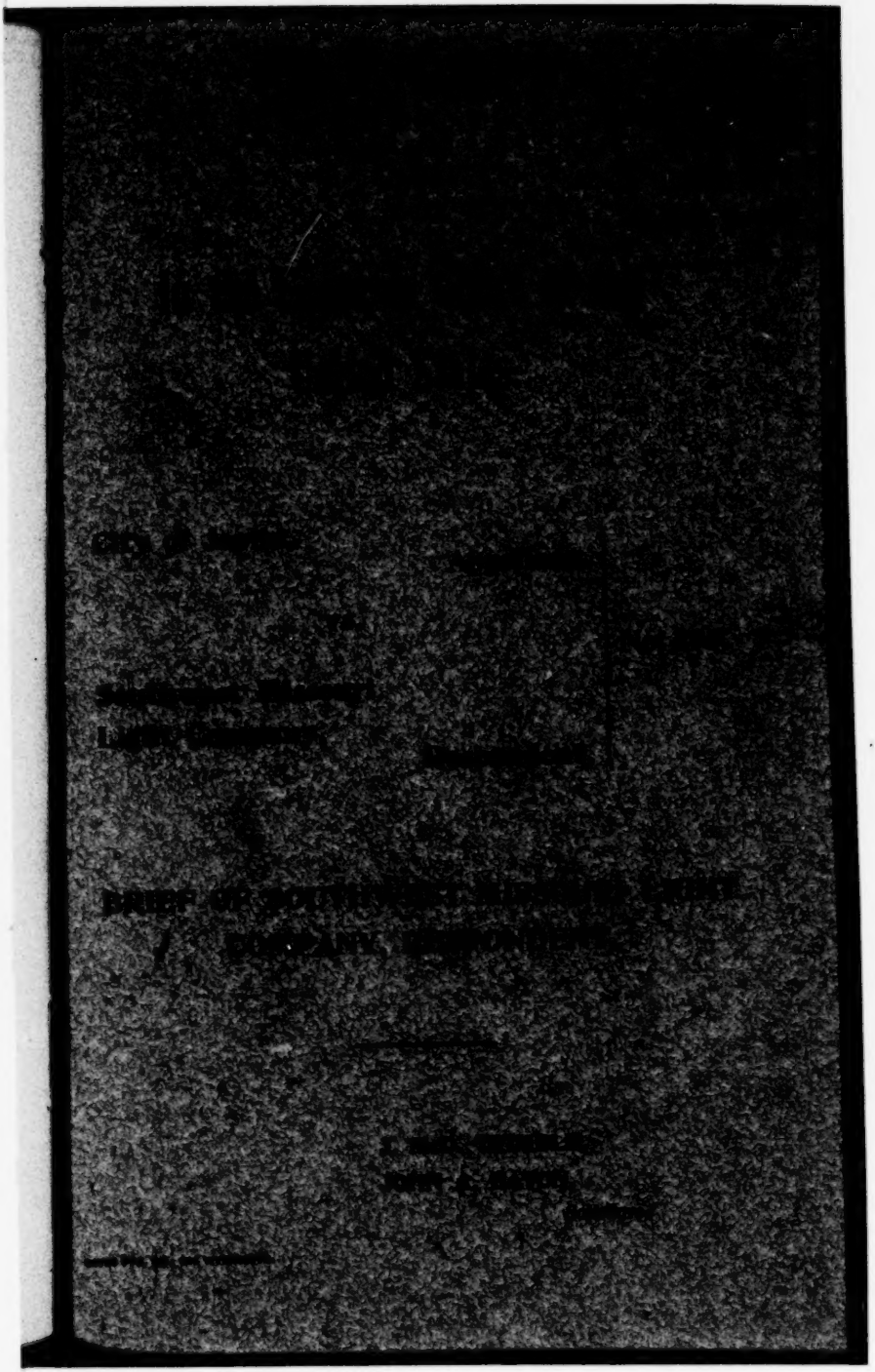
The above company of merchants erected a generating plant in the city, maintained the light free of charge and complied with all the requirements of Ordinance 441 until it sold out to respondent on the 9th day of June, 1896. As soon as respondent secured control, it dismantled the plant, took down the pole line and refused to act under Ordinance 441, or in any manner to be bound by its provisions. The circumstances all show that respondent purchased the franchise and plant of the merchant's company to get it out of business, not because it needed it. It had a plant. It had a pole line. It had no use for either. After being dismantled and torn up, it had no value ex-

cept for second hand machinery, poles and wires. It had no use for the franchise because it had a better one. This fact is made more prominent by the contract of sale made with Merchant's Company (R. p,46) in which all the stockholders of the Merchant's Company agreed not to engage in the lighting business in the city of Joplin for a period of ten years from and after June 1st, 1896.

After respondent had thus violated t e terms of, and repudiated Ordinance 441, all the objects sought to be attained by both grantors and grantees in the passage of that ordinance had failed. There was no competition in the lighting business, and the city was not supplied from any plant located in the city. In addition to this, no satisfactory electric lights could be obtained either by the city or its citizens. This condition of affairs continued for some time, when the city was at last forced to build its own light plant.

Respondent's solicitors cite a number of cases which they contend sustain their doctrine of an implied contract, but an examination of such cases will disclose that in all of them, there was some provision of exclusive right upon which they turned, and not upon any implied contract contended for in this case. The decisions of this court seem all againt such contention. The doctrine contended for seems to be supported neither by the decisions of the courts nor by reason. Respectfully submitted.

C. H. MONTGOMERY
and S. W. MOORE,
Solicitors for Appellant.



In the Supreme Court of the United States.

City of Joplin, Appellant.	
vs.	**No. 295.**
Southwest Missouri Light Company, Respondent.	

BRIEF OF RESPONDENT.

I.

On October 7th, 1891, the City of Joplin, a city of the third class under the laws of the State of Missouri, passed an ordinance (No. 441), granting to the predecessors and assignors of the Southwest Missouri Light Company

(hereinafter called the Light Company), "the right, power, privilege and authority within the city of Joplin and such additions as may be made thereto, to build, erect, maintain, construct and operate all necessary and convenient electric light and electric motor plants, apparatus, machinery and appliances for the generation of electricity, to provide, erect and maintain proper and adequate conduits and means for the distribution, application and use of such electricity for the purpose of furnishing light, heat, motor power, and for other purposes for the period of twenty years from the granting of this franchise."

The manner of erecting the poles and wires for the purpose of carrying out the above powers was then provided for and regulated, and the city was to be indemnified and saved harmless from expense, cost and damages, or injuries to persons or property during the construction, repair or operation of the plant.

It was provided that not more than certain sums should be charged for electric lights, schedule therefor being fixed with one light at a certain point in the city to be maintained and kept in order without charge or expense to the city.

It was further provided that the grantees in the ordinance, the successors of the Light Company, should within ten days from the date of the passage of the ordinance, file with the City Clerk a written acceptance of the rights and privileges granted, subject to all the conditions imposed by the ordinance. And it was required that work should be commenced in good faith within sixty days from the approval of the ordinance. The acceptance named in the ordinance was filed within the time mentioned. This

grant was, in accordance with and based upon the following statutory provisions then in force:

"The council shall have the right to erect, maintain and operate gas works, electric light works or light works of any other kind or name, and to erect lamp posts, electric light poles or any other machinery or applicances necessary to light the streets, avenues, alleys and other public places, and to supply private lights for the use of inhabitants of the city and its suburbs, and regulate the same, and to prescribe and regulate the rates to be paid by the consumers thereof, and to acquire, by purchase, donation or condemnation, suitable grounds within or without the city, upon which to erect such works, and right-of-way to and from said works, and also the right-of-way for laying gas pipes, electric light wires under or above ground, and erecting posts and poles and such other machinery and appliances as may be necessary for the efficient operation of such works, all of which shall be done in manner prescribed by ordinance; *provided*, that the council may, in their discretion, grant the right to any person or persons or corporation to erect such works and lay the pipes, wires, and erect the posts, poles and other necessary appliances and machinery therefor, upon such terms as may be prescribed by ordinance; provided, further, that such right to such persons or corporation, shall not extend for a longer period than twenty years, and shall not be renewed unless by consent of a majority of the qualified voters of said city voting at an election held for such purpose."

Sec. 1, act approved April 2, 1891, Laws of Missouri (1891), p. 60.

The ordinance above referred to and this statute, present a unique and different question in many particulars from that of any decided case which we have been able to find. When this statute is read into the contract, as it must be (*Walker vs. Whitehead*, 16 Wall. 314), there is nothing to be added by *implication* unless it be that the city

will not go into commercial or competitive private lighting itself.

This is nothing more than an implication that the city, having made the contract, will not or shall not violate it by entering the field and taking away or diminishing the very right it had by its contract conferred and granted.

The *proviso* as used in this statute is a term introducing an alternative power instead of limiting or qualifying what had preceded it.

When the terms of the statute are read into the ordinance, it appears that the city contracted with respect to the *same right* it had by virtue of the first provisions of the same statute relating to its right to construct electric light works, etc.

The words *"for the purpose of furnishing light, heat," etc.,* in the ordinance, are the equivalent of the words "to supply private *lights for the use of the inhabitants of the city, and its suburbs"* contained in the statute. The contract is therefore the granting of the right to furnish or supply lights, and is not the mere grant of a privilege or license. Any other construction would fail to give force to the important provision of the contract embraced in the words above quoted.

Another provision of the contract when read in connection with the statute shows that the city was makng a contract with respect to the furnishing of lights and not granting a mere privilege in the street.

The ordinance *fixed the maximum price of lights and specified the kinds,* and the statute provides that the city may *"prescribe and regulate the rates to be paid by the consumers."*

The terms *"granting the right," "such works"* and *"such light"* in the alternative portion of the statute, and

the provisions as to the time during which the grant was to remain in force, contemplate the making of a contract for the same purpose for which the city might erect electric light works, acting under that part of the statute preceding the proviso.

The contract is not *exclusive* in the sense that the city might not erect its own plant and do the public lighting, as there was no public lighting provided for in the contract. It was only referred to in the words *"to properly suspend street lights if contracted for by the city at any time."*

It was entirely optional with the city as to whether it would contract for public lighting.

There was no contract existing between the city and the Light Company for street lights after September 1st, 1899, and the question of the right of the city to erect its own plant and thus provide for public lighting is not involved in the case.

We are confident also that the contract is not exclusive in the sense of creating a monopoly for twenty years, and that the city might, if it saw fit, grant the right to others who would enter the field as competitors on an equal footing with the Light Company. The contract is, however, *binding,* and in that sense *exclusive,* in that the city would not nullify the contract during the twenty years, and return to the powers conferred in the same statute, go into competitive private lighting, and thus do what it had in the exercise of its *discretion* determined and agreeed not to do.

As to the implied provisions of this contract, viz: that the city should not engage in competitive private lighting itself, we invoke the established rule that the express provisions of the statute and contract shall be first con-

sidered, and then what is necessarily implied from such express provisions. This is the only rule for finding the true and entire contract.

Detroit Citizens St. R. R. Co vs. Detroit R. Co., 171 U. S. 48.

Los Angeles vs. Los Angeles City Water Co., 177 U. S. 558.

This rule is sometimes confounded with the one often announced "that public grants susceptible of two constructions, must receive the one most favorable to the public, and in a public grant nothing may be taken by implication."

In other words, there can be no authority unless conferred in express terms, or such as is necessarily implied by such express terms. But when such authority exists, then a municipal corporation, like any other contracting party, stands upon the same basis as an individual, or private corporation, and may bind itself by implied contracts.

The rule is sometimes mistakenly advanced in the class of cases to which this one belongs, "that all implications, doubts and ambiguities are resolved against the grant or privilege claimed."

While this rule correctly applies to the *grant* of the power, when the grant is once conceded, the rule announced in the cases above cited is the settled one.

Dillon on Municipal Corporations, (4 Ed. Par. 451-459.)

In paragraph 459 the rule is thus broadly stated:

"The present state of the authorities clearly justifies the opinion of Chancellor Kent that corporations may be bound by *implied contracts* within the scope of their powers, to be adduced by inference from authorized corporate acts without either a vote or deed or writing."

Authorities are numerous to the effect that where the municipality is acting within its conferred authority, full effect and force will be given to its acts whether its obligations be expressed or arise by implication. It follows forcefully when the statute is read with the grant or contract, that by necessary implication, the city *did not intend to,* and *elected not to engage* in such commercial lighting by erecting its own plant under the powers conferred by the same statute.

As was said in a case arising in the Supreme Court of Missouri:

"The law implies duties and obligations in a contract from those which are expressed, and the implied duties and obligations are as much a part of the contract as those expressed."

The Union Depot Co. vs. The Chicago K. & N. Ry Co., 113 Mo. 213, l. c. 225.
Bishop on Contracts, Par. 241.
2 *Parsons on Contracts,* (6th Ed.), p. 514.

There can be no doubt upon the proposition that the city intended to and did enter into a contract by the terms of ordinance No. 441 with the grantors of the Light Company. The time which the contract had to run was twenty years, as provided by the statute. The persons receiving the grant organized a corporation which succeeded to all the rights of such persons under the ordinance. It is not contended that the ordinance is unassignable; that it was assigned to the Light Company is admitted.

The ordinance provided for the manner in which the poles should be erected and the wires placed thereon, for the regulation of the rates that should be charged to consumers in that they should not exceed given amounts; that the city should be saved harmless from damages; that one

light (*not an arc light*) should be maintained on the porch of Freeman's foundry, free of expense to the city, and that the city should pay for the cost of the printing of the ordinance. In other words, obligations rested upon the Light Company or its predecessors which were *mutually responsive* to the grant made and the obligations resting upon the city.

The allegations in the answer of the city and its attempt to show that there was no light maintained on the porch of Freeman's foundry and that the lights were not of the quality and kind required by the ordinance, while immaterial to this controversy, *are a confession that a contract existed.*

In respect to the implication involved in this contract, this court said in *Walla Walla vs. Walla Walla Water Co.*, 172 U. S. 1.

"Taking Sections 7 and 8 together, they amount simply to this: That if the city should desire to establish water works of its own, it would do so by condemning the property of the company, and making such changes in its plant or such additions thereto as it might deem desirable for the better supply of its inhabitants; but that it would not enter into a direct competition with the company during the life of the contract. As such competition would be almost necessarily ruinous to the company, it was little more than an agreement that the city would carry out the contract in good faith.

"An agreement of this kind was a natural incident to the main purpose of the contract, to the power given to the city by its charter to provide a sufficient supply of water, and to grant the right to use the streets of the city for the purpose of laying water pipes, to any person or association of persons for a term of not exceeding twenty-five years."

In *Cort vs. Lassard*, 17 Oregon 221; 17 American

St. Rep. 720, 22 Pac. 1054, it is said that in the nature of things a contract to act at a particular theatre for a specified time necessarily implies a regulation against acting at any other theatre during that time, according to the true spirit of such an agreement, the implication precluding the defendant from acting at any other theatre during the period for which he agreed to act for the plaintiff, follows as inevitably and logically as if it was expressed.

So in *United States vs. Babbit,* 1 Black 55, (66 U. S.), the court says:

"What is implied in a statute, pleading, contract or will is as much a part of it as what is expressed."

"It is a well known rule of law that every contract must be construed as if those terms which the law will imply were expressly introduced into it."

Winecup vs. Hughes L. R., 6 C. P. 78, 84.
Donahue vs. Kittrell, 1 Cliff. 144.

When applied to the facts in this case, does not the implication necessarily arise that during the life of the franchise the city would not become a competitor of the complainant, and certainly not in the matter of general commercial lighting; it is unreasonable to suppose that either of the parties could have at the time intended that the city, (with its power to maintain the plant by public taxation, and to run it at even less than the cost price,) should become a competitor of the complainant in the matter of general commercial lighting. That the city is precluded under the terms of the franchise from lighting its own public buildings and its streets and alleys (in the absence of an express contract on its part with the complainant for the latter to do such lighting), we do not claim.

There is an obvious distinction in such a case between the right of the city to light its own house—so to speak—

and its going into the market and doing lighting for the general public for pay.

It is said by this court:

"That some degree of implication must be given to words is a proposition of universal adoption. Implication is but another term for meaning and intention, apparent in the light of judicial inspection."

Massachusetts vs. Rhode Island, 12 Peters 723.

In the exercise of its *business or proprietary powers,* the city of Joplin adopted the ordinance (No. 441), and entered into the contract contained therein. In fixing the maximum charge to be made for the lights, it contracted for the private advantage of the inhabitants of the city.

The purpose of such a contract is not to govern the inhabitants of the city, but to obtain a private benefit for the city itself and its denizens.

Illinois Trust & Savings Bank vs. City of Arkansas City, 76 Fed. 271, and authorities and cases cited in the opinion on page 282.

The city, for a period of about ten years after the adoption of the ordinance, continued to recognize it as establishing contract relations between the grantees therein named and the Light Company as their successor.

It continually month after month acquiesced in the relations between the Light Company and the inhabitants of the city. It acquiesced in the large expenditures in the construction of the plant and the expenditure of a large sum of money in its enlargement to meet the growing needs of the city.

For these reasons it ought not now to be heard to question the existence of the contract, nor ought it to be heard to assert that the grant was merely a naked privilege.

In *Illinois Trust and Savings Bank vs. City of Arkansas City, supra,* Judge Sanborn, in the opinion citing a large number of cases and authorities said.

"No principle is more universal in the jurisprudence of civilized nations, no principle is more equitable in itself, or more salutary in its effects, than that no one may, to the damage of another, deny the truth of statements and representations by which he has purposely or carelessly induced that other to change his situation. In a business transaction like that of procuring the construction of water works and the use of water for itself and its inhabitants, a municipality is subject to this principle to the same extent as a private corporation. The same rules govern its business transactions that govern the negotiations of private individuals and corporations."

In such a case the principle of estoppel against the corporation from asserting that no contract relations exist, applies.

Zabriskie vs. Railroad Co., 23 How. 381.

II.

After making this contract, and before the time therein had expired, when about one-half of its term yet remained, the city passed Ordinance No. 1160 (136) providing for increasing the indebtedness of the city and holding an election for the purpose of voting upon the proposition of building and maintaining a system of electric light works. It then passed Ordinance 1165 (137) which covered the canvas of the vote, cast at the election, for the building of the works and *"contracting with private consumers."* This ordinance contains this significant section:

"Section 6. That the expense of operating said plant

shall be paid as far as possible out of the revenue derived from the sale of lights to private consumers, and any surplus of revenues shall be turned into the general fund of the city."

The city then passed Ordinance No. 1175 (138), which provided for a board of managers for the plant to be erected by the city, giving to this board *full control over the price of lights, contracting with private consumers therefor, and the collection of rental thereon.*

It appears that every taker of commercial light from the city would be lessening proportionately his share of the public burden to be borne by taxation imposed to support public lights. The effect of such competition needs no comment.

It also appears that the city had established lower rates than those charged by the Light Company, which would operate to take away the consumers from it, and that such low rates were to be applied regardless of loss to the city, and regardless of the fact as to whether such rates would involve the replacing of such loss by taxation. Such acts cannot but be disastrous to complainant and its property.

The havoc and injury to the Light Company's rights and property secured to it by the contract, could only be circumscribed by the limits to which the city saw fit to carry the competition. As a competitor it need not fear loss or bankruptcy. From no other source could arise such relentless competition. Indeed, this kind of competition by the city would be a most potent way for the city to take away from the Light Company the rights it has under the contract.

Following this ordinance provision, the city pro-

posed to supply lights to private consumers (141), and proceeded with its arrangements to do so.

It prepared and published rates of service which were much lower than those of the Light Company, and which, upon a competitive basis, would have driven the Light Company out of the field. The effect of the competition thus inaugurated by the city is fully pointed out and disclosed by the testimony in the record. (99-103; 121-122).

Upon the passage of the above ordinances by the city, and its acts pursuant thereto in going into the business of private or commercial lighting upon such rates and terms with consumers as it might see fit to adopt, the Light Company predicates its suit for relief by injunction, its suit being based upon the invalidity of the ordinances of the city so far as they provided for competitive lighting, for the reasons that they were in violation of the contract and property clauses of the Constitution of the United States.

The case was twice before the Circuit Court; first upon an application for a temporary injunction (101 Fed., 23); and, second, upon final hearing (113 Fed., 817).

A suggestion heretofore made by the city that the competition proposed would not seriously affect the Light Company, and that it could go ahead with its business, is an attempt to minimize the facts and results of the violation of the contract. While the effect of the course proposed by the city would undoubtedly be as we have pointed out, it is a sufficient answer to the comforting conjecture of no material injury to say, that it has been settled, that if the contract has been impaired in any degree, the prohibition of the Constitution may be

invoked. In *Walker vs. Whitehead,* 16 Wall.,314, this court said:

"The obligation of a contract is the law which binds the parties to perform their agreement; any impairment of the obligation of a contract, the degree of impairment is immaterial, is within the prohibition of the Constitution."

But it appears that the city does not propose to be an ordinary competitor, such as must in the nature of things pay as it goes. It would be, and proposes to be, an unusual competitor for the avowed purpose of receiving enough from its commercial lighting to pay for its public lights. This is the limit it sets upon its charge for commercial lights.

This suggestion of profit to be made by the city from the commercial lighting is an important factor in the case for three reasons:

First. The extent of the competition against the complainant would be augmented and intensified for the reason that the taxpayers in the city who became the users of the city lights would be thereby contributing towards a condition in which no taxes would be levied for public lights.

Second. The proposition presupposes a combination between the taxpayers and the city authorities who levy and assess the taxes, from which must necessarily follow a species of competition as unfair as it is unusual.

Third. The city would tax complainant's property for the purpose of competing with it, while the property with which it causes such competition is untaxed; and it may, whether so intended now or not, furnish lights at

a loss, and make up such loss from other sources, supplied by taxation.

Here rests the true starting point.

It has been held that—

"Courts may acquaint themselves with the persons and circumstances that are the subjects of the written agreement and place themselves in the situation of the parties who made the contract; view the circumstances as they viewed them, so as to judge of the meaning of the words, and of the correct application of the language to the thing described."

Guarantee Co. vs. Mechanics' Sav. Bank & Tr. Co., 80 Fed., 766, 776.

Goddard vs. Foster, 17 Wallace, 123, 143.

The following cases are in point, fully supporting the right to an injunction in this suit:

Walla Walla Water Co. vs. City of Walla Walla, 60 Fed., 957.

Walla Walla vs. Walla Walla Water Co., 172 U. S., 1.

Westerly Water Works vs. Town of Westerly, 75 Fed., 181.

White vs. City of Meadville, (Pa.), 35 Atl., 695.

In the *Walla Walla* case, *supra,* the city granted a franchise for twenty-five years to erect water works and furnish the inhabitants of the city with water, in which franchise it was stipulated that the city reserved the right to take, condemn and pay for the water works of the company at any time during the existence of the contract, and that the city would not erect water works of its own during the life of the contract. The statutory provisions were stated as follows:

"By the city charter it was provided that the city is authorized 'to grant the right to use the streets of said

city for the purpose of laying gas and other pipes intended to furnish the inhabitants of said city with light or water to any persons or associations of persons, for a term not exceeding twenty-five years—provided always, that none of the rights or privileges hereinafter granted shall be exclusive or prevent the council from granting the said rights to others'; and by section 11, 'the city of Walla Walla shall have power to erect and maintain water works within or without the city limits, or to authorize the erection of the same for the purpose of furnishing the city or the inhabitants thereof with a sufficient supply of water.'"

The city, after the ordinance granting the franchise had been in force for six years, passed an ordinance providing for the erection of its own water works, and proposed to compete with the water company, holding the franchise; to prevent such act on the part of the city, an injunction suit was prosecuted.

The decision of the lower court was affirmed by this court in the case above cited.

The provision in the Walla Walla Water contract that the city would not erect its own works, etc., does not furnish any distinction because:

(*a*) As we have shown, this provision is to be implied, and is as fully a part of Ordinance No. 441 as if it were expressed therein.

(*b*) The decision shows that even if it had not been expressed in the contract, such a provision would have been implied.

This court in its opinion in the *Walla Walla* case, *supra*, says:

"Nor do we think the contract objectional in its stipulation that the city would not erect water works of its own during the life of the contract. There was no attempt made to create a monopoly by granting an ex-

clusive right to this company, and the agreement that the city would not erect water works of its own was accompanied, in Section 8 of the contract, with a reservation of the right to take, condemn and pay for the water works of the company at any time during the existence of the contract. Taking Sections 7 and 8 together, they amount simply to this: That if the city should desire to establish water works of its own, it would do so by condemning the property of the company, and making such changes in its plant or such additions thereto as it might deem desirable for the better supply of its inhabitants; but that it would not enter into a direct competition with the company during the life of the contract. As such competitions would be almost necessarily ruinous to the company, it was little more than an agreement that the city would carry out the contract in good faith.

An agreement of this kind was a natural incident to the main purpose of the contract, to the power given to the city by its charter to provide a sufficient supply of water, and to grant the right to use the streets of the city for the purpose of laying water pipes, to any person or association of persons for a term not exceeding twenty-five years. In establishing a system of water works the company would necessarily incur a large expense in the construction of the power house, and the laying of its pipes through the streets, and as the life of the contract was limited to twenty-five years, it would naturally desire to protect itself from competition, as far as possible, and would have a right to expect that at least, the city would not itself enter into such competition. It is not to be supposed that the company would have entered upon this large undertaking in view of the possibility that, in

one of the sudden changes of public opinion to which all municipalities are more or less subject, the city might resolve to enter the field itself—a field in which it undoubtedly would have become the master—and practically extinguish the rights it had already granted to the company. We think a disclaimer of this kind was within the fair intendment of the contract, and that a stipulaton to that effect was such a one as the city might lawfully make as an incident of the principal undertaking."

In *Westerly Water Works vs. Town of Westerly, supra,* the city had granted a franchise to erect water works and furnish water for a long period, after twenty-five years of which the city was to have the right to purchase the works at a valuation.

The terms of purchase were not agreed upon and the city proceeded to erect its own works, to enjoin which, the suit was brought. In the opinion granting the injunction, the court says:

"Turning then, to the substantive question which, as it seems to me, must be here decided, the question is whether the contract here in dispute contains an implicit reservation, founded on the then existing state of the law, of a right of a town, at pleasure, to construct water works. The law gives power to construct water works, and also to contract for water supply, and, as incidental to such contract, to confer certain rights and exemptions on the contractors. Does this leave it competent for the town to make a contract with this corporation, and afterwards without any default alleged on the part of the corporation, and in derogation of the terms of the contract, to construct other works? The question is not whether the town may grant a franchise to be exclusively exercised by the company for a term of years, without regard to its ability or willingness to furnish an adequate supply of suitable water; but the question is, rather, whether the

town has not, by its own act under one branch of the law, limited its power to act under the other branch of the act. Answering the question in the affirmative, I find that the town is making the attempt to exceed the limits so set; and the findings of the Supreme Court of Rhode Island is ground for a conclusive finding here that such attempt is in terms authorized by the state law,—that is to say, that the acts which I find to have this character are so authorized. The necessary conclusion on this point seems to me to be that this proceeding amounts to an act of the state impairing the obligation of a contract."

Citing *Hamilton Gas Light & Coke Co. vs. Hamilton City,* 146 U. S., 258.

In the case of *White vs. City of Meadville, supra,* the statute of the state gave cities of the third class the exclusive right to supply themselves with water, or to contract with any company for the erection of a water plant, and give it the exclusive right to furnish water to the city.

A contract under this statute was made for two terms of ten years each to furnish water for *public purposes.*

The city afterwards passed an ordinance to vote bonds to build its own water works. The bonds were voted and the city proceeded to build its works, when the owners of the water works, built under the franchise, brought suit to enjoin, and the injunction was sustained. Dean J., speaking for the Supreme Court of Pennsylvania, uses the following pertinent language:

"Here, then, plainly, were two distinct methods by which the municipality could supply its citizens with water. By putting either method in operation the same end was accomplished; that is, the supplying of the citizens with water. There is no repugnancy in the provisions of the two acts, on the assumption that one or the

other alone will be adopted to effect the purpose. There will be a decided repugnancy in their operation if both be put at work at the same time to effect that purpose. If anything be manifest, it is that if two water mains be laid side by side on the same street, equally accessible to the householder on each side, conveying double the quantity needed, with double sets of hydrants, pumping stations, offices, salaries and expenses, one or the other must be abandoned. No community will pay double for any article of necessity or luxury. If the property holder must, by compulsory taxation, support the municipal system, he will not voluntarily support the private corporation system. Such a conflict of interests will inevitably bankrupt the system which depends on the voluntary patronage of the public. We hesitate to assume—every court is bound to hesitate long before assuming—that the legislature intends by grants, to distinct corporations for public purposes, that there shall arise such conflict in the exercise of the franchises as will result in the practical destruction of property of any citizen without compensation. It is a cardinal rule of construction, between older and younger grants of franchises, that the sovereign does not intend that the younger shall infringe on the older; but to assume that these franchises can be in existence and in operation at the same time is to assume that the commonwealth has granted precisely the same thing to the municipality that it had already granted to the water company, for, in a business view, the contemporaneous exercise of the franchise is impossible. * * *

The primary grant was the power to supply; the secondary one, the grant of two distinct methods of exercising the power, either of which might be adopted. There was no grant of power to put both methods in operation at the same time; for once the power has been exercised to supply the city, by contract, through another creature of the same sovereign, then the municipal function has passed from the city, and must be performed by

the other contracting party, which last has rights and obligations imposed upon it by law, as clearly defined and as capable of enforcement as those of the city. As long as the city keeps within the scope of its powers to bargain, it must stand by the bargain, the same as an individual. *We do not doubt that the legislature could, by the act of 23rd May, 1874, have granted to the city the right to change back and forth from one method of supply to the other, as whim or interest might dictate. It is sufficient to say that it did not do so.* This view of the scope of legislation on this subject accords with the known facts. A municipality, in its beginnings, is perhaps not financially strong, or its debts may approach the constitutional limit so closely that it cannot borrow. Nevertheless the low state of its financial condition does not render less urgent the necessity of a water supply. It can obtain it in but one way,—by contract with those who have the money, and are willing to invest their private capital in the construction of water works. The legislature knew that capital would not be invested in such an enterprise if in the future it were liable to confiscation by competition with a public enterprise operated from a municipal treasury capable of replenishment from the pocket of the taxpayer."

As said in the Walla Walla case, *supra*:

"It is not to be supposed that the company would have entered into this large undertaking in view of the possibility that, in one of the sudden changes of public opinion to which all municipalities are more or less subject, the city might resolve to enter the field itself,—a field in which it undoubtedly would have become the master,—and practically extinguish the rights it had already granted to the company.

The following cases, in addition to those cited, are in support of the proposition that a legislative act which

impairs the obligation of an existing contract is void, as violative of the contract clause of the Constitution.

New Orleans vs. Rivers, 115 U. S., 674.
St. Tamany Water Works Co. vs. New Orleans, 120 U. S., 64.
City of Los Angeles vs. Los Angeles Water Co., 177 U. S., 558.

III.

In a number of cases this court has had under consideration state laws and municipal ordinances, the purpose or effect of which was to violate, destroy or impair the obligations of municipal corporations arising under existing contracts. The cases are decided upon and necessarily controlled by the particular constitutional and statutory provisions of the state in which the controversies arose, and for this reason the cases are readily distinguishable and inapplicable to the case here.

Many of these cases have been cited and reviewed in quite recent decisions.

In the case of *The City of Detroit, et al, vs. Detroit Citizens' Street Railway Co.,* 184 U. S., 368, this court had occasion to cite many of these cases, and while discussing a question of violation by change of rates of fare on a street railway, summarized the rule, not only as to the particular act complained of, but generally in the following language:

"There can be no question in this court as to the competency of the state legislature, unless prohibited by constitutional provision, to authorize a municipal corporation to contract with a street railway company as to rates of fare, and so bind during the specific period any

future common council from altering or in any way interfering with such contract.

The contract once having been made, the power of the city over the subject so far as altering the rates of fare or other matters properly involved in and being a part of the contract, is suspended for the period of the running of the contract."

The cases of the *Hamilton Gas Light & Coke Co. vs. City of Hamilton,* 146 U. S., 258, and *State ex rel vs. City of Hamilton,* 47 O. S., 52, are dissimilar to the case here, and inapplicable.

In those cases the relief asked was a decree perpetually enjoining the city from disconnecting its lamp posts from the gas mains, or from lighting the city by any means or process other than that of the plaintiff's gas, as well as from issuing bonds for the purpose of erecting gas works, or for the purpose of providing gas works for supplying the gas lights for the streets, lanes, alleys, public buildings and places, and for private consumers.

The Gas Company claimed that contract relations existed by virtue of an ordinance passed by the city under the provisions of Sections 2480 and 2482 of the codified laws of Ohio of 1869.

Subsequent to the passage of the laws embodied in these sections, the legislature passed Section 2486, Revised Statutes of 1869, which is as follows:

"The council of any city or village shall have power whenever it may be deemed expedient for the public good, to erect gas works at the expense of the corporation, or to purchase any gas works already erected therein."

It was held by the Supreme Court of Ohio, in the case above cited, that there was no repugnancy between this provision and the provisions of the section under which the Gas Company acquired its rights by the ordinance.

We infer from the decision, that if the legislature had not adopted the above section, the former provisions would not have authorized the city to abrogate its contract with the Gas Light Company. See the statutes quoted in the opinion, and note that the opinion is based upon the powers conferred on the city council to abrogate the contract only by reason of the powers conferred by Section 2486 *supra*.

This section was upheld as not unconstitutional because of the provisions of the Ohio constitution whereby the legislature of the state had the right to authorize the city to deprive the Light Company of its franchise and property. If the statutes of Ohio had remained as they were prior to the passage of Section 2486, *supra*, it may be gathered from the opinions of both courts in the two *Hamilton* cases, that the decisions would have been adverse to the city.

In the case decided by the Supreme Court of Ohio, *supra*, Spear, Judge, disssents in an exhaustive opinion, holding that even under the apparently sweeping provisions of Section 2486, *supra*, the city could not, by erecting its own plant and entering into competition with, or opposition to the Gas Company, deprive the company of its franchises. It will be observed that it was not decided in the *Hamilton* cases as to what would be the effect if the city (after Section 2486 of the Ohio statute went into effect) should have granted a franchise to the Gas Company, and subsequently should have undertaken to establish a rival plant of its own. In addition to these suggestions, the cases throughout rest upon principles dissimilar to those involved here.

If the legislature of the state of Missouri had passed a sweeping statute subsequent to the act under

which the ordinance to the grantors of the Light Company was granted, and if such statute had given power to erect electrict light works whenever the city might deem expedient, and if this suit were for the purpose of enjoining the erection of such works, and the doing of *any kind* of lighting, some features of similarity would appear.

As will be seen in both cases, the Ohio constitutional provision was important and controlling in the case. Unlike the constitution of the state of Ohio considered in the *City of Hamilton* cases, neither the Missouri constitution nor the statute in question, nor any other statute, provides *that either the legislature or the city may alter or revoke the grant.* Therefore it cannot be said, as it was said in that case, that the parties must be held to have contracted with such reserved powers in view and subject thereto.

Counsel cite and rely upon what may be styled the *"Mobile Cases." Bienville Water Co. vs. City of Mobile, et al,* 95 Fed., 539. The same case in 175 U. S., 109. *Stein vs. Bienville Water Co.,* 141 U. S., 67. There being still another case, not cited, upon kindred propositions, *Bienville Water Supply Co. vs. City of Mobile,* 186 U. S., 212.

A brief examination of these cases shows them to be clearly inapplicable to the controversy here.

It is apparent from the opinions, that the idea of their being in any way in conflict with the principles announced in the cases cited by us seems to have never entered the mind of this court in its decisions. The Stein case was based upon a franchise from the city of Mobile, which franchise was afterwards approved and recognized by an act of the legislature providing for a supply of water from *a particular source,* while the franchise granted to

the Bienville Water Supply Company was direct from the legislature, and authorized the supply of water from any other point than the source named in the Stein franchise, viz.: Three Mile Creek.

This case therefore turned upon the limited right under the Stein franchise as being in no wise impaired by the grant to the Bienville Water Supply Company, and neither of the franchises involved a contract with the City of Mobile, the obligation of which was in any way impaired.

The Bienville case 95 Fed., 539, and the same case in 175 U. S., 109, arose upon a bill in equity filed by the Bienville Water Company to enjoin the defendant city and certain officers from *making* or *carrying out* any contracts for supplying water to the inhabitants of the City of Mobile or for the construction of a system of waterworks for that purpose during the continuance of the contract made between the complainant and the city, and to enjoin the defendants from proceeding to build or acquire a system of water works, to be owned by the city, to bring water into the city during the continuance of the contract.

To the bill a demurrer was filed, and the causes in the lower court and in this court were heard upon the questions raised by the demurrer.

The franchise or grant to the Bienville Water Supply Company was contained in an act of the legislature. Both the lower court and this court observed that the City of Mobile had granted complainant no rights and privileges whatever; that the rights granted came from the legislature of the state; that in the grant there was no express provision for furnishing the inhabitants with water, and the entire privilege or franchise was held to

be subject to subsequent acts of the legislature, granting additional powers to the city, by which the city was authorized to acquire water works of its own to supply water to itself and its inhabitants.

Upon this state of facts, the demurrer was sustained in the lower court, and the decision of that court affirmed in this court.

Without discussion or further enumeration of points of dissimilarity and inapplicability, it will be seen that upon the facts shown, the cases are not at all in harmony with, nor do they involve the principle governing and controlling the case here.

The case of *Skaneateles Water Works Co. vs. Skaneateles, et al,* 184 U. S., 354, is neither pertinent, applicable nor decisive of the points here involved.

The Water Works Company in that case was chartered under a statute which provided for substantially all of the terms of the contract with the municipality. It left only the matter of regulating and fixing rates at which the town would take water from the Water Company. A contract had been entered into for five years fixing these rates.

This contract had expired, so that there was no contract right other than that embodied in the act under which the company was incorporated, and it was contended that the Water Company held exclusive rights under that act which the town could not violate by adopting, as it did, ordinances for the construction of its own works.

There was neither express nor implied provisions in the act incorporating the Water Company that the city would ever take water from the corporation. The suit was for the purpose of enjoining the city from erecting

its own works, and engaging in the business of supplying water either to itself or its inhabitants.

A decision in favor of the Water Company would have resulted in a monopoly and exclusive franchise for the time fixed in its charter, and would have prevented the town from erecting or constructing its own works for the purpose of supplying itself with water, when it had not agreed, either by express provision of the contract, or by any implication therefrom, to take or accept water from the Water Company.

The case turned upon these facts and these statutory provisions. There was nothing in the decision out of harmony with the *Walla Walla* case, and other cases which support the proposition involved here.

It is to be observed also that the *entire* contract between the Water Company and the town as to any obligation resting upon the town to take water, arose, if at all, by implication. It was founded upon no express terms. In the opinion of the court it is said:

"The contract to which reference is made is not the one which was entered into in 1891 between these parties for the term of five years, because that contract was fully carried out and had expired by its own limitation in February, 1896, but it is the contract which the plaintiff in error claims was implied by reason of its organzation and incorporation in 1887, in pursuance of an application made to, and with the consent of, the village authorities, and under the provisions of Chapter 737 of the Laws of New York of 1873, and the acts amendatory thereof."

It is also said:

"Having before it the above act of 1873, amended in 1877, the Court of Appeals, in *People ex rel Mills Water Works Co. vs. Forrest*, 97 N. Y., 97, 100, decided in 1884, said that 'the state authorized the formation of water

works companies in its towns and villages (Laws of 1877, Chap. 171), but it does not require one so organized to supply water to the town or village, nor does it require the town or village to take its supply of water from the company so formed.'"

The court further says:

"Now, while the parties are prohibited from contracting for more than five years, without a vote of the electors, which was not taken, how can it be said that when they contracted only for the time permitted by the legislature, there was nevertheless an implied contract that the village would never avail itself of the right provided by statute, without purchasing or condemning the property of the plaintiff? No such condition is stated in any statute. We cannot see any solid foundation for the claim that there was a final and conclusive election of methods by the village, out of which sprang the implied contract contended for, when the legislature at that very time prohibited a contract for more than five years. * * * We can appreciate the argument that the village has no right to build and use its own plant during the running of the five years' contract, but we fail to see the force of the claim that, on account of once making a contract with the plaintiff for five years, the village irrevocably bound itself by an implied contract never to build its own plant without taking by condemnation the property of the plaintiff if the parties could not agree on terms of purchase."

From the language above quoted we may infer that if there had been a provision for election as to methods of supply conferred upon the town, and if it had so elected, it would have been bound by the contract so made. The case also presents the time for the running of the contract as being the duration of the charter of the Water Company, and in this respect the transaction did not possess the mutuality or essence of a valid or fair con-

tract, as the town was not a party to the charter provisions as to the time to which the charter might extend.

The case of *St. Paul Gas Light Co. vs. St. Paul,* 181 U. S., 142, does not appear to us to be applicable to the point upon which it is cited, viz.: that nothing is taken by implication in contracts of this character. The court had under consideration two provisions of an ordinance of the city of St. Paul, one declaring that no further interest would be paid upon certain gas lamps, and the other directing that they be removed from the streets.

The only question decided was that neither of these provisions operated to impair the obligation existing between the city and the Gas Company.

There is nothing that indicates that the court had under consideration anything other than the application of the settled rules to the questions presented. The substance of the decision being that the obligations resting upon the city under the contract remained as fully and as enforceable after the passage of the ordinance in question as before. The case is pertinent in that, in a review of decided cases this court refers to, and cites the case of *Walla Walla vs. Walla Walla Water Co.,* 172 U. S., as supporting the rule announced in that case, for which we here contend.

The case of *Freeport Water Co. vs. City of Freeport,* 180 U. S., 587, has been cited upon the point that a municipal corporation may not grant exclusive privileges unless the power is conferred in explicit terms.

The case was one relating primarily to a contract fixing rates. For the purposes for which the case has been cited, it does not appear to us to be applicable to the case here, for the reason, that it is not contended that the making of this contract was a grant of *exclusive*

privileges in any other respect than that the city would not itself engage in the same business and by competitive acts annul and impair the obligation of the contract during the term for which it had to run; this contract cannot be said to be a mere naked privilege, nor can the term "exclusive" be properly applied to it. The ordinance here relied upon is, by its plain terms and the necessary implication therefrom, an agreement upon the part of the city that it would not violate the terms of the contract by destroying or interfering with the rights and privileges which it conferred upon the Light Company or its grantors. Upon this branch of the question the opinion recognizes and cites the *Walla Walla* case as upholding the principle that a municipal corporation has the power to bind itself by an irrevocable contract.

The case of *Levis vs. City of Newton,* 75 Fed., 884, is cited. This case seems to be misunderstood by counsel. The City of Newton passed an ordinance repealing the ordinance granting the franchise to the predecessor of the Electric Light Company, the property of which was encumbered by a mortgage. The trustee in the mortgage brought suit to enjoin the city from enforcing such repealing ordinance whereby the city was about to cause a removal of the poles and lines of the Electric Light Company from the streets of the city. The city demurred to the bill. In a lengthy and exhaustive opinion, the court overruled the demurrer to the bill.

In the United States Circuit Court of Appeals for the Eighth Circuit, the decision of the lower court was affirmed and the case remanded.

Levis vs. City of Newton, 75 Fed., 884.

After remanding the case to the lower court, the

city again demurred to the bill, and the demurrer was again overruled.

Levis vs. City of Newton, 82 Fed., 1006.

The Circuit Court of Appeals sustained the lower court in this last decision upon the ground that the temporary injunction was properly granted. It was a forceful fact in the case that the city of Newton, having for more than eight years recognized the validity of the ordinance, upon the faith of which the electric light plant had been constructed at large expense; the facts in the bill having been confessed by the second demurrer, the case upon its merits rested finally and was decided upon such facts, adversely to the city.

As the acts of the city of Newton and the acts of the city of Joplin did not differ in respect to the principles involved, even though they may not agree in the extent of the confiscation or injury threatened, the decision in the Newton case is pertinent and of forceful weight in this case.

Other cases might be instanced, and the distinguishing points enumerated. The cases generally and necessarily rest primarily upon the construction and application of constitutional and statutory provisions essentially different in the various cases, from which it follows that the cases are to be distinguished from the starting point, and for that reason our opponents have fallen into the error of urging precedents and decided cases which do not fit the case here.

IV.

There can be no question as to the jurisdiction of this court and the Circuit Court.

We might rest the discussion of this question upon the case cited by appellant. *Hamilton Gas Light & Coke Company vs. City of Hamilton,* 146 U. S., 258.

This court in that case determined the jurisdictional question in the following language:

"We sustain the jurisdiction of the Circuit Court because it appears that the defendant grounded its right to enact the ordinance in question, and to maintain and erect gas works of its own, upon that section of the municipal code of Ohio adopted in 1869 (now Section 2486 of the Revised Statutes) providing that the city council of any city or village should have power, whenever it was deemed expedient and for the public good, to erect gas works at the expense of the corporation," etc.

So in this case, the city of Joplin grounded its right to pass the ordinance in question for the erection of its electric light plant and for the purpose of going into a competitive commercial business under the powers conferred in the same section, the alternative part of which authorized the passage of the ordinance granting to the Light Company its rights, so that in each case the city's authority is based upon a legislative enactment, and this would seem to settle the jurisdictional question under the authority above cited.

If there could be any doubt or question concerning the jurisdiction of the Circuit Court and of this court, it appears to us to be settled in the case of *Vicksburg Water Works Co. vs. Mayor and Aldermen of the City of Vicksburg,* 185, U. S., 65.

In the opinion the court states the question under consideration as follows:

"The bill prays for an injunction to restrain the defendant from assuming to abrogate and take away the

franchises and contract rights of the complainant, and from attempting to coerce the company to sell its works to the defendant for an inadequate price, and that said act of the legislature of Mississippi, adopted on March 9, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be declared to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises, and rights of complainant, and said act, ordinance, and resolution, and each of them, are alleged to be in contravention of the Constitution of the United States in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

It cannot be seriously contended that, under the act of March 18, 1886, authorizing the city to provide for the erection and maintenance of a system of water works, and to contract with a party or parties to build and operate water works, and under the ordinance of the city of November 18, 1896, providing for a supply of water to the city and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors, and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the city to make; the terms were explicitly set forth in the ordinance; the works erected were approved by the city, and the respective obligations created by the contract were duly complied with without question or complaint, for a period of fourteen years.

After the lapse of that long period and the continuous acquiescence of the city in the contract as a valid and subsisting one, the city, according to the allegations of the bill, now insists that the said contract was invalid because in excess of its powers to contract, and is proposing to borrow money to erect and maintain waterworks of its own, and become a competitor with the

complainant for the custom of the consumers of water. And the question for our consideration is whether the subsequent legislation, state and municipal, set forth in the bill, impairs the contract rights of the complainant within the protection of the Constitution of the United States.

As respects the act af March 9, 1900, it is contended by the complainant that it is unconstitutional for several reasons, chiefly because it places an arbitrary valuation on the property of the complainant, and because it purports to authorize the city to build and operate water works of its own in derogation of the contract rights of the complainant.

Whether this act of the legislature of Mississippi is, in its terms, subject to those objections, or whether it may be regarded as merely authorizing the city to proceed in such a manner as not to conflict with existing contract obligations, we need not determine at this stage of the case, because we think that the ordinance of the city of November 7, 1900, whereby the mayor was instructed to notify the Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water works hydrants, and the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct water works of its own, and in refusing to pay the amount due and payable under the terms of the ordinance, do not present the mere case of a breach of a private contract to be remedied by an action at law, but disclose an intention and attempt, by subsequent legislation of the city, to deprive the complainant of its rights under an existing contract; and that therefore, unless the city can point to some inherent want of legal validity in the contract, or to some such disregard by the Water Works Company of its obligations under the contract as to warrant the city in declaring

itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a federal question."

Upon the subject of jurisdiction presented here, the case of *Riverside & A. Ry Co. vs. City of Riverside, et al,* 118 Fed., 736, presents a collection of the cases heretofore decided by this court, and cases decided in the various federal courts bearing upon the question. The city of Joplin assumed the right to pass the ordinances under the statutory provision heretofore referred to, and insists upon the validity of the ordinances, and now presents an inconsistent alternative in saying that possibly its acts were null and void for the reason that there was no statutory authority authorizing the passage of these ordinances.

In the case of *St. Paul Gas Light Co. vs. St. Paul,* 181 U. S., 142, in discussing the effect of a municipal ordinance passed under the exercise of legislative power delegated by the legislature, the principle indirectly affecting the question of jurisdiction here under consideration, the court said:

"It is no longer open to question that a by-law or ordinance of a municipal corporation may be such an exercise of legislative power delegated by the legislature to the corporation as a political subdivision of the state, having all the force of law within the limits of the municipality, that it may properly be considered as a law, within the meaning of this article of the Constitution of the United States. And citing *New Orleans Water Works vs. La. Sugar Ref. Co.,* 125 U. S., 18. *Hamilton Gas Light Co. vs. Hamilton City,* 146 U. S., 258. *Walla Walla vs. Walla Walla Water Co.,* 172 U. S., 1."

The jurisdiction depends upon the allegations of the bill, and not upon the facts as they were developed in the case, and the plaintiff having in good faith alleged that the ordinances and threatened acts of the city thereunder would impair the obligations of the contract, the jurisdiction became complete.

City R. Co. vs. Citizens' Street R. Co., 166 U. S., 557.

It will hardly be seriously urged that the ordinances providing for the competitive lighting were a nullity, because the act of the legislature was void for the reason that the city entered into the contract under the alternative portion of the *same section.* At best the powers of the city under the first part of the section were only suspended during the life of the contract, and then only, so far as this case goes, as to the private or commercial lighting by the city itself.

Upon this question of jurisdiction our opponents have again overlooked the real point of the controversy. The statute is not void, and the relief asked by the Light Company does not contemplate or even infer its invalidity.

V.

Two statutes of the state of Missouri are copied in the appellant's brief, but as we understand the reference to these statutes it is not contended that the city acted or pretended to act under any other statute than the one we have quoted relating to cities of the third class.

An examination of the statutes of Missouri under the title "Cities and Towns," discloses, that Article IV, Chapter 30, Gen. Stats. 1889, applies specifically to cities of the *third class,* such as Joplin. Chapter 31 of the same title contains *miscellaneous provisions and general powers applicable to all cities.*

The legislature of the state on March 27, 1891, passed and approved an act relating to cities and towns governed by miscellaneous provisions, which confers, among other things, the power to maintain and operate gas plants, electric light plants, etc. (See laws of Missouri 1891, page 67). Afterwards on April 2, 1891, at the same session of the legislature, an act to amend Article IV of Chapter 30, of the Revised Statutes, 1889, was passed, in which appears the section under which the City of Joplin was acting at the time of the passage of Ordinance No. 441.

It is obvious that the City of Joplin, when it passed the ordinance, was acting under the provision of this latter statute. So far as the provisions contained in the act of March 27, 1891, are concerned, they are not applicable to cities of the third class, for the reason that a general law existed upon the same subject relating to that particular class of cities, and if it was intended to operate as to cities of the third class, the later statute would operate to repeal the former act. So far, therefore, as any question of what statute controlled the City of Joplin in respect to the ordinance in question is concerned, it is clear that the act of April 2nd contained the only direct and explicit power for the passage of such an ordinance. Even if there were any question as to which statute the city was acting under when it passed the ordinances providing for competitive commercial lighting, the

principle remains the same, that under the powers conferred by either statute, such act was in violation of the Constitutional provisions here invoked.

The separate existence of these two statutes has been preserved throughout subsequent legislation and codification. The act of April 2, 1891, was amended in 1893, Laws 1893, page 65, while the act approved March 27, 1891, was amended in 1897, Laws 1897, page 56, and each of the sections are separately codified in the Revised Statutes of Missouri, 1899, in the Third Class Cities Act as Section 5845, and the miscellaneous provisions as to all cities act, as Sec. 6487. The first under Article IV relating to cities of the third class, and the second under Article XX, relating to water works, electric light plants, etc., in all cities and towns in the state.

VI.

It appears from the record that the Light Company erected an extensive plant and expended a large sum of money . The nature and character of the plant is fully described in the record (52-70; 104-117.)

There was not only an extensive step-down or reducing plant for the supply and its regulation in the City of Joplin, but a combined water and steam power generating plant, a short distance from the city at Grand Falls (50-70) and the amount expended upon the plant was over $300,000. (98).

The record does not support some of the appellant's conclusions of fact. It does not appear that after the acquiring of the franchise covered by Ordinance 441, that there was any cessation of business under that franchise or any dismantling or removing of the plant. What did occur

was that the machinery or generating power was transferred to Grand Falls, and a step-down or reducing plant established in Joplin. It was nothing more than a different mode of supply, much more extensive in character.

Based upon what a witness (Bayne, an ex-employe of the Light Company) *supposed* and *understood* as to whether the works were operated under the contract in question or another franchise (189) a statement has been deduced that the Light Company repudiated and refused to furnish lights under the franchise covered by Ordinance 441. Such is not the fact, as disclosed by the positive evidence (70) and the whole record. Apppellant's statement in this respect is a mere assumption, based upon conjectureal testimony in response to leading and suggestive questions.

The free light on Freeman's porch was an incandescent light and was kept burning. (190.) It was not the arc light that was put in the street at that point. The arc light placed in the street was upon the application of the city authorities.

There was much testimony drawn out upon cross examination of complainant's witnesses, and from witnesses introduced by the city relative to the character of the public lights furnished the city, this proof was in no way germane to the case upon the pleadings, as the public lights or public lighting was not involved and the city settled any delinquencies by reduction in the bills.

There is some testimony regarding the commercial lights. This, we believe, to be nothing more than a magnified instance of the characteristic objections which may arise in the supply of any public utility, and whatever there was in this direction was occasioned by extensive improvements being made in the Light Company's machinery and appliances,

and a breakdown occcasioned by the failure of one of the turbine water wheels.

If it were material, the record does not disclose any substantial failure on the part of the Light Company in the performance of the contract, and we contend for all of these facts, that they go to support the proposition that the city recognized the existence of the contract, and acted upon it, and ratified it, and fully recognized the relations existing under the contract between the city and the Light Company.

As to any failures to perform, the city had its remedy. As to the public lights, it enforced its rights by reduction in the bills. As to the light on Freeman's porch, it established *an arc light* in the street so as to better light the crossing of the railroad in the street, while the *incandescent light* was kept burning on the porch. So that whether the facts in this respect are material or not, there is nothing shown in the case which can justify the city in avoiding the contract of the Light Company, by appropriating its business.

That the city proposed to engage in private or commercial lighting stands admitted. That such competition would be unlike that of any other competitor and destructive of the rights of the Light Company seems to us apparent, and upon the sole material question of fact that such competition would seriously impair the obligation of the contract, and deprive the Light Company of its property, appears, to us to be supported by the undisputed facts in the case; see the testimony of George M. Myers, on pages 99-103 of the Record—and see further testimony of Chas. E. Hodkins, on pages 121-122.

Respectfully submitted.

J. McD. TRIMBLE, and
JOHN A. EATON,
Solicitors for Respondent.

Supreme Court of the United States.

No. 32.—October Term, 1903.

The City of Joplin, Appellant, vs. The Southwest Missouri Light Company. } Appeal from the Circuit Court of the United States for the Western District of Missouri.

[November 16, 1903.]

Bill in equity to restrain the appellant from supplying its inhabitants with incandescent lights or other electric lighting in competition with the appellee.

The city of Joplin is a municipality of the State of Missouri; the appellee is a corporation of said State, and the jurisdiction of the Circuit Court was invoked on the ground that the action of the city impaired the obligation of the contract existing between it and the appellee, in violation of the Constitution of the United States, and hence the appeal directly to this court.

A preliminary injunction was granted. (101 Fed. Rep. 23.) It was made perpetual upon final hearing, and a decree was entered enjoining the city "from supplying or furnishing to the inhabitants, residents or any other person, firm or corporation within said city, or any addition thereto or extension thereof, electric lights, either incandescent or arc, or in any other form or manner, for commercial or private lighting, for and during the full term" of the grant to the predecessors and assignors of appellee, to wit, the term of twenty years from and after October 7, 1891. (113 Fed. Rep. 817.)

A statute of Missouri (Laws 1891, p. 60) authorizes cities to erect, maintain and operate electric light works, to light the streets, and supply the inhabitants with light for their own use, and to establish rates therefor. Or they may, the statute provides, "grant the right to any person or persons or corporation to erect such works . . . upon such terms as may be prescribed by ordinance, provided that such right . . . shall not extend for a longer period than twenty years." Subsequently to and in pursuance of this statute the city by ordinance, October 7, 1891, granted the right to erect and maintain an electric light plant to certain persons, naming them, their successors and assigns, for a period of twenty years. The plant was erected at considerable expense, and has ever since been maintained and operated. The appellee is the successor of the original grantees.

The ordinance conferred rights and exacted obligations, and fixed, besides, the rates to be charged. It also provided for its written acceptance

within ten days after its passage and the commencement of the work within sixty days. It was accepted.

Subsequently, (March, 1899,) the city, acting in pursuance of and in the manner provided in certain ordinances, issued bonds to the amount of $30,000, "for the purpose of erecting an electrical light plant to be owned, controlled and operated by the city," and by the means obtained thereby constructed electrical works, erected poles and wires, established a schedule of rates, and entered into the business of commercial electrical lighting in competition with appellee. The bill alleged that the appellee was the owner of real and personal property within the city, which is assessed by the city for municipal taxation, and that appellee is compelled by reason of such taxation "to aid and assist in operating and maintaining defendant's (the city's) electric plant and business as a rival and competing one" with appellee's electrical plant and business.

Mr. Justice McKenna, after stating the case, delivered the opinion of the Court.

The foundation of the suit is that the ordinances of March, 1899, and the acts and conduct of the city in entering into competition with the complainant (appellee) impairs the obligation of the contract impliedly arising from the ordinance of October 7, 1891, and the acceptance thereof by appellee. In other words, it is contended that under the statute of the State, which we have quoted, the city was given the power to construct an electrical plant and erect poles, &c., to "supply private lights for the use of the inhabitants of the city," or it could grant that right "to any person or persons or corporation" upon such terms as might be prescribed by ordinance. It chose the latter, and granted to the assignors of appellee the right given by the statute and expressed it to be "in consideration of the benefits to be derived therefrom." And it is hence contended that thereby the city contracted not to build works of its own, and that by doing so it violated section 10 of the Constitution of the United States, which provides that no State shall "pass any law impairing the obligation of a contract," and also violated that clause of the Fourteenth Amendment of that instrument, which provides that no State "shall deprive any person of property without due process of law."

It is by implication from the statute and the ordinance passed under it, not from the explicit expression of either, that the conclusion is deduced that the city is precluded from erecting its own lighting plant, and yet it is conceded that the grant to the appellee is not exclusive. That is, it is conceded the city has not exhausted its power under the statute by the grant held by appellee, but may make another to some other person than the appellee. In other words, that the city may make a competitor to appellee, but cannot itself become such competitor. The strength of the

argument urged to support the distinction is in the consideration that competition by the city would be more effective than competition by private persons or corporations—indeed, might be destructive. The city, it is further urged, could be indifferent to profits and could tax its competitor to compensate losses. But this is speculation and it may be opposed by speculation, and there are besides countervailing considerations. The limitation contended for is upon a governmental agency, and restraints upon that must not be readily implied. The appellee concedes, as we have seen, that it has no exclusive right, and yet contends for a limitation upon the city which might give it (the appellee) a practical monopoly. Others may not seek to compete with it, and if the city cannot, the city is left with a useless potentiality while the appellee exercises and enjoys a practically exclusive right. There are presumptions, we repeat, against the granting of exclusive rights and against limitations upon the powers of government.

Many cases illustrate this principle, and some of them were decided in response to contentions similar to those made in the case at bar. In *Skaneatales Water Co.* v. *Skaneatales*, (184 U. S. 354,) the village of Skaneatales, under statutes of the State of New York, granted to the water company the right to construct waterworks, and contracted with it to supply water to the village and its inhabitants for the period of five years. At the expiration of the term of the contract some difference arose about the terms of its continuance, and the village constructed an independent system of waterworks. A suit was brought by the water company to restrain the further construction of the works and their operation, and the company contended that under the statute of the State, by which the village granted to the company its franchises, the village had the election to construct works, or confer such power upon a private company like the water company, and having elected the latter, it impliedly contracted not to construct works of its own. In reply to this contention this court said, by Mr. Justice Peckham:

"There is no implied contract in an ordinary grant of a franchise, such as this, that the grantor will never do any act by which the value of the franchise granted may in the future be reduced. Such a contract would be altogether too far-reaching and important in its possible consequences in the way of limitation of the powers of a municipality, even in matters not immediately connected with water, to be left to implication. We think none such arises from the facts detailed."

It is true there was an element in that case which is not in the case at bar. The village of Skaneatales had entered into a contract with the water company to take water from the company. This contract had expired before the city constructed its works. It was not that contract, however, which was alleged to have been impaired, but that which the water company claimed to have been implied by reason of its organization

and incorporation and in pursuance of the application made to and with the consent of the village authorities. The ultimate reliance, therefore, of the water company was that from the grant to it the village impliedly contracted not to construct works of its own. The similarity of the contention with that in the case at bar is apparent.

In *Bienville Water Supply Company* v. *Mobile*, (175 U. S. 109; 186 U. S. 212,) it was again decided that the granting of franchises to private persons to construct waterworks in a city does not preclude the city from afterwards erecting such works and supplying its inhabitants with water.

Walla Walla v. *Walla Walla Water Co.*, (172 U. S. 1,) is not in opposition to these views. The city of Walla Walla was, by the statute incorporating it, empowered to erect waterworks or to authorize the erection of the same. In pursuance of this power it granted a franchise to the Walla Walla company and contracted to take water from the company, reserving the right to avoid the contract under certain contingencies. But it was provided that: "Until such contract shall have been so avoided, the city of Walla Walla shall not erect, maintain or become interested in any waterworks except the ones herein referred to, save as hereinafter specified." The contract was in force at the time the suit was brought and the water company had substantially complied with all of its terms and conditions. The contract passed upon, therefore, was expressed and explicit. The power to make it was sustained. In the case at bar restraint upon the power of the appellant city is claimed to be implied by the grant to the appellee. We think, for the reasons stated and upon the authorities cited, such restraint cannot be implied.

Decree reversed and case remanded with directions to dismiss the bill.

True copy.

Test:

Clerk Supreme Court, U. S.